FILED
JAN 10 1983
ALEXANDER L. STEVAS
CLERK

No. 82-65

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MARGARET R. BROWN, et al.,
Appellants,
v.
THYRA THOMSON, Secretary of the
State of Wyoming, et al.,
Appellees.

BRIEF OF APPELLEES

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QUESTIONS PRESENTED

Whether the State of Wyoming violated the Equal Protection Clause of the Fourteenth Amendment by reserving one of sixty-four seats in its House of Representatives for the people of Niobrara County where the allocation of that seat had no significant effect on the appellants, who reside in other Wyoming counties.

PARTIES TO THE PROCEEDINGS

Additional defendants in the district court were:

Ed Herschler, Thyra Thomson, Shirley Wittler and James B. Griffith, as members of the State Canvassing Board, and Ed Herschler, as Governor of the State of Wyoming.

Intervening Defendants in the district court were:

James L. Thompson, Gerald D. Bardo, Russell Thompson, Kenneth A. Gropp, Richard G. Pfister, Peter M. Hansen, Gertrude Chamberlain, Betty Percival, Mary L. Burke, Board of County Commissioners of the County of Niobrara, Kenneth R. Freeman, as a County Commissioner of the County of Niobrara and in his individual capacity, F. Everett Brooks, as a County Commissioner of the County of Niobrara and in his individual capacity, and Louis L. Landkamer, as a County Commissioner of the County of Niobrara and in his individual capacity.

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the Wyoming Constitution and statutes pertaining to legislative apportionment are set out in Appendix A hereto, at pp. 1a, 66a. Other provisions pertinent to state and county government, taxation and revenue, school finances and the relationships among state and local governments are also set out in Appendix A. (A map of Wyoming depicting county lines is provided at Appendix B.)

STATEMENT OF THE CASE

Niobrara County is one of twenty-three counties in Wyoming. Historically, the citizens of Niobrara County have had their own representative in the State House of Representatives. In order to ensure that the people of Niobrara County continue to receive effective representation in that body and to maintain Wyoming's tradition of county-oriented government, the Wyoming Legislature adopted in 1981 a reapportionment plan that created a 64-member House of Representatives with one representative to be elected from Niobrara County. The Legislature also provided that, if the 64 plan were held to be unconstitutional, then the House would be composed of 63 members and the citizens of Niobrara County would be forced to share a state representative with neighboring Goshen County. The plaintiffs below, appellants herein, subsequently brought suit claiming that the 64 plan violated the Equal Protection Clause of the Fourteenth Amendment and requesting that the 63 plan be used instead.

A. The History of Wyoming Reapportionment

The Wyoming Legislature has been reapportioned following each decennial census since 1960. Although each plan has been challenged on equal protection grounds, the federal

courts have consistently upheld the apportionment of the Wyoming House of Representatives. In so doing, the courts consistently have recognized the strong state interest in drawing electoral lines along county boundaries.

In 1964, the United States District Court for the District of Wyoming ("the District Court") first considered a constitutional challenge to the makeup of the State Legislature. The District Court struck down the apportionment of the State Senate because it had not been apportioned on a population basis. *Schaefer v. Thomson*, 240 F. Supp. 247, 251 (D. Wyo. 1964). The District Court, however, upheld the reapportionment of the Wyoming House of Representatives. Although the House apportionment was not mathematically perfect, the District Court recognized that population deviations were justified by the State's desire to ensure adequate representation for small counties like Niobrara County. 240 F. Supp. at 251.

In 1965, the District Court ordered into effect an apportionment plan for a 30-member State Senate, *Schaefer v. Thomson*, 251 F. Supp. 450, 452 (D. Wyo. 1965). The District Court stressed that the plan "preserved the established county boundaries" wherever possible. *Id.*, at 452. Only one county was divided by the plan and the District Court emphasized that that line of division was "easily ascertainable by a natural boundary" and was in accord with "population and geographic" considerations. *Id.*, at 453. The District Court also reaffirmed its previous determination that the reapportionment of the State House of Representatives was constitutional. On appeal, this Court affirmed. *Harrison v. Schaeffer*, 383 U.S. 269 (1966) (*per curiam*).

Following the 1970 census, the House and Senate were reapportioned by the Wyoming Legislature and those reapportionments were once again challenged on constitutional grounds. *Thompson v. Thomson*, 344 F. Supp. 1378 (D. Wyo. 1972). Again, the District Court approved the reapportionment of the House. *Id.*, at 1380. The District Court

recognized that the Senate plan was largely based on the 1965 court-ordered redistricting, which "attempted to preserve historical county lines." *Id.* The Senate plan was upheld because changes from the 1965 plan were made to reflect population changes. *Id.*, at 1380-81.

B. The 1981 Wyoming Reapportionment

In 1981, after the most recent census, the Wyoming Legislature again reapportioned the State Senate and the House of Representatives. The Legislature drew districts for a 30-member Senate and a 64-member House of Representatives. When it considered the allocation of House seats, the Legislature recognized that a scheme based purely on population distribution would leave Niobrara County as the only county in the State without its own representative because, in the ten years from 1970 to 1980, the population of Niobrara County remained stable while the State population increased. In order to avoid such a loss of representation, the Legislature provided that Niobrara County shall have one representative to the 64-member House. Wyo. Stat. § 28 2-109.

In enacting the 64 plan the Legislature carefully balanced the interests of Niobrara County against the effect of the reapportionment scheme on the remainder of the State. Recognizing that the "needs of each county are unique," the Legislature stated that "the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the state legislature than if each is guaranteed at least one representative." Joint Appendix ("J.A.") 68; *see also* App. A. at 66a to 71a (reprinting the entire 1981 apportionment law). Second, the Legislature found that the effect of the 64 plan on the remainder of the State is "trivial when weighed against the need to maintain the integrity of county boundaries." *Id.* Third, the Legislature determined that expansion of the Legislature, which would allow more districts with fewer constituents, would be impractical. *Id.*

The Legislature recognized the possibility of attack on the constitutionality of the allocation of a representative to Niobrara County. Accordingly, it provided that if (and only if) the 64 plan were "found to be unconstitutional," then the State House of Representatives would have 63 members with a single representative to be shared between Niobrara County and Goshen County. Wyo. Stat. § 28-2-109(a)(iv).

C. The District Court Proceedings

This case began when seven Wyoming voters filed suit challenging the constitutionality of the 64 plan. Appellants alleged that the reapportionment act constitutes "a systematic and purposeful discrimination" against them. Appellants' Complaint requested the District Court to enjoin the State from "unlawfully reapportioning the Wyoming Legislature for the purposes of granting a seat in the House of Representatives to Niobrara County." J.A. 4. In place of the 64 plan appellants requested the District Court to implement the 63 plan. Trial Transcript ("Tr.") 14-15; *see* 536 F. Supp. at 781.

At trial, the State presented evidence demonstrating and explaining the effect of the 64 plan on the appellants. A series of exhibits compared the minimum percentage of the State's population necessary to elect a majority of the members of the House under the 64 plan with the percentage necessary to do the same under the 63 plan. *See* Joint Appendix Exhibits ("J.A. Ex.") A507-A508. Under the 64 plan, 46.65% of the State's population theoretically can elect 51.56% of the representatives whereas the 63 plan would permit 46.56% of the population to elect 50.79% of the House. *Id.* A statistical expert testified that the difference between the plans is insignificant. J.A. 40 (testimony of Phil Kiner).

The State also presented evidence demonstrating the importance of counties to the governmental structure of Wyoming. County governments provide law enforcement

and health services and act as the primary vehicle through which the State collects taxes. J.A. 17 (testimony of Gerald Fox). Because counties are limited in the amount of revenue they can collect for their own purposes, they are inevitably dependent upon the State Legislature for the distribution of revenue. *Id.*, at 17-20. The Legislature provides supplemental revenues to its counties through several methods, including direct appropriations to political subdivisions. J.A. 46-47 (testimony of Sharron Kelsey); 52-54 (testimony of Don Collamore). In the recent past, the Legislature has enacted laws for the specific benefit of counties and local school districts, which generally are co-extensive with county lines. *Id.* The ability of counties to attract new business and industry is heavily dependent upon the methods used by the Legislature to allocate funds among local governments. J.A. 58, 61-62 (testimony of James G. Thompson).

D. The District Court Opinion

After trial, the three-judge District Court unanimously rejected the appellants' attack on the allocation of a representative to Niobrara County. *Brown v. Thomson*, 536 F. Supp. 781 (D. Wyo. 1982); Appendix to Jurisdictional Statement ("A") 17. The court emphasized two holdings. First, the court found appellants' claim to be *de minimis*. Statistical evidence demonstrated that use of the 64 plan instead of the 63 plan would have only a "trivial" effect on the ability of the appellants to elect a majority of the House, *id.*, at 783; A. 24. Second, the court held that those differences between votes that did exist as a result of the 64 plan were amply supported by the established state interest in preserving county government. The court emphasized that, "[c]ounties have always been a major form of government" in Wyoming and that counties remain "the primary administrative agencies of the State government." *Id.*, at 784; A. 27. Without separate representation, "the interests of the people of Niobrara County would be virtually unprotected" because the residents of Niobrara Coun-

ty would form a minority of a joint legislative district with neighboring Goshen County. *Id.;* A. 26.

Judge Doyle, concurring, emphasized that the Court faced a "narrow" issue pertaining to "a single county." *Id.*, at 785; A. 28. Judge Doyle reiterated that "the representation for Niobrara County did not injure the other counties," and that "the representation by county approach . . . has been historically followed in Wyoming." *Id.*, at 786, 788; A. 29, 30. Thus, Judge Doyle concluded that the 64 plan met the constitutional standards enunciated by this court.

E. Subsequent Events

Appellants petitioned this Court to note probable jurisdiction of their appeal from the three-judge court. On October 4, 1982, this Court granted appellants' request and set this case for plenary consideration.

On November 2, 1982, the voters of the State of Wyoming elected the State Legislature pursuant to the 64 plan. The voters of Niobrara County elected a new state representative to represent them in the State Capital.

SUMMARY OF ARGUMENT

The only issue presented to the District Court, and the only issue properly presented to this Court, concerns the claim by appellants that the Wyoming Legislature violated the Equal Protection Clause of the Fourteenth Amendment by including within the 64-member State House of Representatives one seat for the people of Niobrara County. Appellants' claim is insufficient. First, appellants have failed to support their allegation that they have been the victims of purposeful discrimination. Proof of purposeful discrimination is necessary to support a finding that the Equal Protection Clause has been violated. Appellants did not — and cannot — demonstrate that enactment of the 64 plan was for any but the explicitly stated legislative purpose — to ensure effective representation for the people of Niobrara County.

Second, appellants have failed to demonstrate that the challenged classification of voters into different electoral districts violates the principle of equal treatment guaranteed by the Equal Protection Clause. Apportionment plans are invalid under the Equal Protection Clause if they impinge a voter's fundamental interest in remaining free from vote dilution. The apportionment plan does not infringe that fundamental interest because it does not create a substantial risk that a small percentage of voters will be able to elect a majority of the members of the House. Since no fundamental interest is threatened by the 64 plan, the proper standard of review for the appellants' remaining claim of unequal treatment is the rational basis test.

The apportionment plan easily passes this standard. The use of county lines to draw legislative boundaries furthers the historic interest in preserving county boundaries and helps preserve the strength of the current structure of State government. In Wyoming, counties are the basic unit of local government. They are required by the State to assume many governmental functions and they are the channel

through which many state expenditures flow. Wyoming's vital interest in maintaining the strength of county government and ensuring that county citizens have effective access to the state government outweighs the *de minimis* impact of the 64 plan on appellants.

ARGUMENT

I.

THE ONLY QUESTION PROPERLY PRESENTED TO THIS COURT CONCERNS THE CONSTITUTIONALITY OF THE ALLOCATION OF ONE STATE REPRESENTATIVE TO NIOBRARA COUNTY

This case presents a single, narrow question: Whether the State of Wyoming violated the Equal Protection Clause of the Fourteenth Amendment by allocating to Niobrara County one of sixty-four representatives to the State House of Representatives in a manner that did not dilute significantly the votes of other citizens of Wyoming. As appellants recognize, "the only issue tried below involved the legislative grant of the one representative to Niobrara County." Brief for Appellants at 14. Indeed, the District Court, both at trial, *see* J.A. 29, and in its opinion, emphasized that "[a]t issue before this Court is the relatively simple question whether or not the allocation of a representative to Niobrara County constitutes invidious discrimination and, as such, is unconstitutional." 536 F. Supp. at 781, A. 20; *see also* J.A. 4 (Appellants' Complaint ¶ 7); Pre-Trial Transcript at 21-22.

Nonetheless, appellants suggest that this Court may examine the constitutionality of the entire reapportionment scheme. *See* Brief for Appellants at 14.[1] But the general

1. Appellants rely on *Maryland Committee v. Tawes*, 377 U.S. 656, 673 (1964), in which this Court, considering a challenge to the constitutionality of the Maryland Senate, held it would also consider the constitutionality of the apportionment of the Maryland House of Delegates although the lower courts had not considered that issue. 377 U.S. at 673. The *Tawes* decision may demonstrate that this Court has the power to consider issues not determined by the lower courts but it cannot be read as requiring this Court always to exercise that power. To the contrary, the decision in *Gaffney v. Cummings*, 412 U.S. 735, 739 n.5 (1973) demonstrates that this Court

rule, which should be applied in this case, is that this Court will not ordinarily consider a constitutional challenge for the first time on appeal. *See Jenkins v. Anderson*, 447 U.S. 231, 234 n.1 (1980); *Tacon v. Arizona*, 410 U.S. 351, 352 (1973) (*per curiam*). This rule serves two important interests. First, it accords the lower courts proper respect, by refusing to allow parties to withhold issues from their consideration. Second, it also affords this Court the benefit of the views of lower courts, which may be more familiar with the factual record and issues of state law or practice than this Court. *See Jenkins v. Anderson*, 447 U.S. at 234 n.1.

These purposes are particularly important in this case. The parties did not introduce evidence designed to address the constitutionality of the reapportionment generally. Had the apportionment of the entire plan been at issue, the State would have introduced evidence explaining the legitimate reasons relied upon by the Legislature for drawing electoral districts other than the one encompassing Niobrara County. Such evidence would have been clearly relevant, *see Mahan v. Howell*, 410 U.S. 315, 323 (1973), and its absence from the record prejudices the State's ability to confront new issues for the first time in this Court. Second, this Court would be aided by initial consideration of the issues — particularly the nature of the state interests that underlie the reapportionment plan — by the three-judge District Court, which included both district court judges now sitting in Wyoming.

For these reasons, this Court should refuse the appellants' request that the constitutionality of the reapportionment act as a whole be considered for the first time by this Court.

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will not generally consider a reapportionment issue not raised by the parties. In that case, the Court considered only the constitutionality of the composition of one house of the Connecticut legislature because no challenge had been made to the composition of the other house. The Court clearly did not regard the *Tawes* decision as requiring it to consider all issues that potentially may be raised concerning the constitutionality of the apportionment of a bicameral legislature.

Accordingly, the only question properly before this Court is whether the 64 plan, which accords Niobrara County one representative, may be constitutionally employed instead of the 63 plan, which combines Niobrara and Goshen Counties into one representative district.

II.

THE APPELLANTS FAILED TO MAKE THE NECESSARY SHOWING THAT THEY ARE THE OBJECTS OF PURPOSEFUL DISCRIMINATION

In their complaint filed in District Court, appellants alleged that the passage of a reapportionment plan allocating a representative to Niobrara County constituted "purposeful discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. J.A. 4. Although appellants accurately understood that their allegation of "purposeful discrimination" is constitutionally mandated, they introduced no evidence at trial that could support the necessary finding of intent to discriminate. Accordingly, the appellants' claim must fall on this ground alone.[2]

This court — in a series of cases from *Washington v. Davis*, 426 U.S. 229 (1976) to *Rogers v. Herman Lodge*, 102 S.Ct. 3272 (1982) — has emphasized that the Equal Protection Clause "can be violated only by purposeful discrimination." *General Building Contractors Ass'n v. Pennsylvania*, 102 S.Ct. 3141, 3150 (1982).[3] A finding of purposeful discrimination requires more than a showing of disparate impact or a showing that legislators may have been aware that adverse consequences would fall upon a particular group. Rather, that standard "implies that the decisionmaker, in this case a state legislature, selected or

2. The District Court did not explicitly address this issue. But, as noted above, the appellants clearly proffered the allegation and, moreover, the State denied that purposeful discrimination existed. Answer at ¶7. The existence of purposeful discrimination was thus properly presented to the three-judge court. Because this Court is reviewing the district court judgment on appeal, *see* 28 U.S.C. § 1253, the whole case — including the issue of purposeful discrimination — is now before this Court. *See Fusari v. Steinberg*, 419 U.S. 379, 387-88 n.13 (1975); *Holder v. Aultman, Miller & Co.*, 169 U.S. 81, 88-89 (1898).

3. *See also, City of Memphis v. Greene*, 101 S.Ct. 1584, 1596 (1981); *Mobile v. Bolden*, 446 U.S. 55, 66 (1980) (plurality opinion); *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979); *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265 (1977).

reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administration of Mass. v. Feeney*, 442 U.S. at 272; *see also Mobile v. Bolden*, 446 U.S. at 71 N.17 (1980); *United Jewish Organizations v. Carey*, 430 U.S. 144, 179-80 (1977) (Stewart, J., with whom Powell, J., joined, concurring in the judgment).

Recently, this Court has approved the application of the purposeful discrimination requirement in two cases concerning alleged unconstitutional vote dilution. In *Rogers v. Herman Lodge, supra*, black voters alleged that a system of at-large elections unconstitutionally diluted their voting strength. This Court reaffirmed the "basic principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment." 102 S.Ct. at 3277, *quoting Mobile v. Bolden*, 446 U.S. at 66. Similarly, this Court recently affirmed the judgment of a three-judge court that rejected a vote dilution claim brought by Hispanic voters challenging a legislative reapportionment on the ground that the plaintiffs had failed to show intentional discrimination. *Hispanic Coalition, Etc. v. Legislative Reapportionment Com'n*, 536 F. Supp. 578, 585-86 (E.D. Pa. 1982), *aff'd*, 51 U.S.L.W. 3252 (Oct. 5, 1982).[4]

Although appellants alleged purposeful discrimination, they failed to support that allegation at trial. The plaintiffs introduced the testimony of four witnesses, only one of whom, state legislator Charles Scott, claimed to have any personal knowledge of the intent of the Wyoming legislature in enacting the reapportionment plan. Mr. Scott testified

4. Although this Court has most often discussed the requirement of purposeful discrimination in cases alleging unconstitutional racial classifications, it is clear that the requirement is not so limited, *see Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256 (1979). Indeed, this Court "has indicated that attacks on apportionment schemes on racial, political, or economic grounds should be judged by the same standard." *Mobile v. Bolden*, 446 U.S. at 87 n.7 (Stevens, J., concurring); *see Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971) (districts "conceived or operated as purposeful devices to fur-

that the plan was motivated by "an express legislative desire to give Niobrara County its own seat." J.A. 64. Similarly, the reapportionment act itself explains that the plan is designed to further "the interest of each county" in maintaining "a voice in the legislature." J.A. 68.

To be sure, the Legislature recognized that the reapportionment act would have a "trivial" effect on voters similarly situated to appellants. J.A. 68. But that showing is insufficient to demonstrate that the framers of the Wyoming Constitution or the Legislature formed the intent to injure appellants. In *Personnel Administrator of Mass. v. Feeney*, 442 U.S. at 279, this Court considered a challenge to a Massachusetts statute that gave a preference in state employment to veterans. The statute was alleged to discriminate against women, who were less likely than men to be veterans. This Court recognized that the Massachusetts Legislature could have foreseen that implementation of the veterans' preference plan would have a disproportionate impact on women. But the Court held that mere "awareness of consequences" is insufficient; rather proof of purposeful discrimination demanded a showing that the challenged measure was adopted "because of" its impact on women. *Id.* Nothing in the record supported such a showing.

The same is true here. That the Wyoming Legislature may have known that the reapportionment act would have a *de minimis* impact on appellants is insufficient to support a finding of purposeful discrimination. Appellants must show that the reapportionment act was passed "because

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ther racial discrimination" are unconstitutional); *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965) (it would be illegal to operate an apportionment scheme "to minimize or cancel out the voting strength of racial or political elements of the voting population").

Moreover, the "central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race." *Washington v. Davis*, 426 U.S. at 239. It is unimaginable, therefore, that the Framers of the Fourteenth Amendment could have intended that plaintiffs claiming racial discrimination shoulder the burden of showing purposeful discrimination, but that other plaintiffs alleging violations of the Equal Protection Clause be relieved of that requirement.

of" such impact. Not only is such proof entirely absent from the record, but it is difficult — if not impossible — to believe that the members of the Wyoming Legislature not from Niobrara County would have formed an intent to discriminate intentionally against their own constituents. Accordingly, the District Court's dismissal of appellants' claim should be affirmed.[5]

5. On occasion, this Court has discussed the "purposeful discrimination" standard in a manner that has emphasized the facial neutrality of the statute under examination. *See Personnel Administrator of Mass. v. Feeney*, 442 U.S. at 273; *but see Rogers v. Herman Lodge*, 102 S. Ct. at 3276 (noting that "a showing of discriminatory intent has long been required in *all* types of equal protection cases charging racial discrimination") (emphasis in original). Of course, the state constitutional provision and the operative portions of the statute attacked by petitioner, *see* Brief for Appellants at 8-10, are facially neutral because they do not expressly indicate any intent to disadvantage voters in more populous counties. But even if the statutes were not facially neutral, the appellants would still have to show that discrimination was purposeful. This Court has never held that the Equal Protection Clause requires a showing of purposeful discrimination only if challenged action is facially neutral. Rather, this Court has emphasized that "discriminatory intent or purpose is required to show a violation of the Equal Protection Clause." *Arlington Heights v. Metro Housing Dev.*, 429 U.S. at 264-65. Where a statute is not facially neutral, it may be more likely that the state acted with purposeful intent and, therefore, the inquiry may shift to the next issue — whether purposeful imposition of a burden on a specified group is nonetheless justified because it is a necessary means of achieving a substantial governmental interest. The inquiry into purposeful discrimination always remains the initial inquiry, however, and if, as in this case, there is no proof of purposeful discrimination, then it is unnecessary to consider whether the state can justify its classifications.

III.

THE DISTRICT COURT PROPERLY HELD THAT THE REAPPORTIONMENT PLAN IS CONSTITUTIONAL

The District Court upheld the constitutionality of the 64 plan finding that the allocation of a representative to Niobrara County (i) did not infringe the fundamental interests of the appellants in remaining free from vote dilution and (ii) created classifications among Wyoming voters that are supported by legitimate state policies. This two-step analysis properly tracks the reasoning of *Reynolds v. Sims*, 377 U.S. 533 (1964). That case requires first that an apportionment scheme must be examined to ensure that it does not impair appellants' fundamental interests in preserving a system of majority control of the state legislature. Second, the challenged plan, like all legislative classifications, must be examined in order to ensure that the means employed — the creation of different electoral districts — are sufficiently related to the advancement of legitimate state goals.

The District Court accurately discerned that the 64 plan withstands constitutional scrutiny under both parts of the two-step analysis. First, the appellants' proof of vote dilution "is insufficient" and shows no more than a "de minimis" effect. 536 F. Supp. at 783; A. 24. Second, the Court, recognized that "counties have always been a major form of government in the State," and that — without the 64 plan — "the interests of the people of Niobrara County would be virtually unprotected." *Id.*, at 784; A. 26.

A. The Allocation of a State Representative To Niobrara County Will Not Dilute Appellants' Votes

In the District Court appellants alleged that they would be injured by implementation of the 64 plan and requested that the 63 plan be put into effect. 536 F. Supp. at 781; A.

21; *see* Tr. 14-15. But the reapportionment plan has no demonstrable adverse effect on the appellants because it is free from the flaw inherent in unconstitutional apportionment schemes: there is no chance that control of the Wyoming Legislature could be held in the hands of only a few voters. As the District Court recognized, the allocation of one representative out of sixty-four to the voters of Niobrara County will not unconstitutionally dilute the vote of any citizen. Accordingly, there is no basis for this Court to disturb the conclusion that "[n]o discomfort is apparent as a result of giving the people of Niobrara County . . . sorely needed representation." 536 F. Supp. at 788; A. 33. (Doyle, J., concurring).

Claims challenging the apportionment of state legislatures involve two distinct interests. Of course, and as discussed in Part III(B) *infra*, any districting plan requires examination to ensure that persons in different districts are being treated fairly. But more is at stake. Although the "right to vote, *per se*, is not a constitutionally protected right," *San Antonio School District v. Rodriquez*, 411 U.S. 1, 35 n. 78 (1973); *see Rodriquez v. Popular Democratic Party*, 102 S.Ct. 2194, 2199 (1982), this Court has recognized that the implementation of constitutionally flawed reapportionment plans may infringe upon the fundamental interest of voters to be free from vote dilution. The interest in voting is of fundamental importance because the ability of each citizen "to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." 377 U.S. at 562.

The constitutional danger posed by reapportionment schemes is not that they prohibit participation in local election; the danger is that they "may *dilute* the effectiveness of some citizens' votes. . . ." *Kramer v. Union School District*, 395 U.S. 621, 626 (1969) (emphasis in original).[6]

6. The "fundamental interest" analysis also has been employed by this Court to strike down some state requirements that bar a person from voting. Thus, this Court has held unconstitutional the imposition

Where a citizen's vote is diluted, he will find that a majority of the state legislature is controlled by a small minority of the state's population. But legislatures "should be bodies which are collectively responsible to the popular will." *Reynolds v. Sims*, 377 U.S. at 565. Consequently, this Court has refused to "sanction minority control of state legislative bodies . . .", *id.*, and held that, in order to ensure the vindication of majoritarian principles, apportionment plans that appeared to dilute votes substantially would be "carefully and meticulously scrutinized." *Id.*, at 562.

Among the best indicia of vote dilution is the measurement that ascertains whether a small minority of the state population may be able to control the state legislature and thus thwart majority will. *See e.g., Reynolds v. Sims*, 377 U.S. at 545. In a mathematically perfect system, 51% of the state's population will be able to elect a majority of the members of a state's legislative body. In a system in which votes are unconstitutionally diluted, a small percentage of the state's population will be able to elect a majority. For example, the reapportionment scheme held unconstitutional in *Reynolds v. Sims* would have permitted 25.1% of the state's population to elect a majority of the state senate and 25.7% to elect a majority of the state house of representatives. *Id.* In such circumstances, the intervention of the federal judiciary is required in order to ensure that the citizens of a state have the power to control their own government. But this Court has never required that mathematic perfection be achieved. Where a State legislature is apportioned in a manner that does not dilute significantly any citizen's vote, then an apportionment plan will be upheld ever though it is possible for slightly less than 50%

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of a poll tax as a condition for voting, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) and the use of certain durational residence requirements, *Dunn v. Blumstein*, 405 U.S. 330 (1972), while upholding the disenfranchisement of felons, *see Richardson v. Ramirez*, 418 U.S. 24 (1974) and the use of other durational residence requirements, *see Marston v. Lewis*, 410 U.S. 679 (1973); *Burns v. Futson*, 410 U.S. 686 (1973).

of a State's citizens to elect a majority of the legislature. *See Mahan v. Howell*, 410 U.S. 315, 319 (1973).

The State has introduced into evidence the data necessary to measure vote dilution for this and past Wyoming apportionment plans. *See* J.A. Ex. A501-A508. Each chart measures the minimum population necessary to elect a majority of the members of a body of the State Legislature. This analysis is labeled the "worst-case" scenario because it adds together the representatives of the least populated districts in order to determine the smallest number of citizens that could theoretically control a legislative body. Where the figure is close to 50% there is no conceivable basis for concern that the majoritarian principles of *Reynolds v. Sims* may be disrupted by a reapportionment plan.

As the District Court recognized, the appellants in this case cannot show that their votes will be diluted significantly by the provision of a representative to Niobrara County. Under the 64 plan, 46.25% of the State's population can theoretically elect 51.56% of the members of the House. The disparity that might be labeled vote "dilution" is thus 4.91%. If Niobrara County were forced — as the appellants would require — to share one representative with Goshen County, then 46.56% of the state's population would be able to elect 50.79% of the House. The difference would then be 4.23%. J.A. A507-508. The improvement sought by appellants is, therefore, less than one percent.

The direct effect on appellants of the allocation of one representative to Niobrara County can also be measured by examining the extent to which the population of the counties in which appellants reside are represented in the House. The seven counties in which appellants live contain 46.3% of the State's population. Under the 64 plan, these voters are able to elect 43.75% of the State's representatives. If the 63 plan were used, the same population could elect 44.4% of the House. 563 F. Supp. at 782. This difference — of .65% — is the only vote "dilution" that has

been caused by the Legislature's decision to allocate a representative to Niobrara County. As the District Court correctly concluded, "the effect on plaintiffs is best described as *de minimis.*" 536 F. Supp. at 783. *See O'Shields v. McNair,* 254 F. Supp. 708, 719-20 (D.S.C. 1966).[7]

The figures at issue in this case are well within constitutional limits. In the 1965 Wyoming reapportionment, which was affirmed *per curiam* by this Court, *see Harrison v. Schaeffer,* 383 U.S. 269 (1966), the constitutionally permissible districting allowed 47.42% of the State's population to elect 53.33% of the State Senate, J.A. Ex. A504, and 46.54% of the state's population to elect 50.82% of the House, J.A. Ex. A505. The court-approved reapportionment plan implemented in Wyoming after the 1970 census similarly permitted 49.7% of the State's population to elect 56% of the Senate and 46.89% of the State to elect 51.61% of the House, J.A. Ex. A506. The "dilution" caused by the allocation of a representative to Niobrara County is thus within constitutional bounds.[8]

The appellants rely on different statistical measures in order to press their claim of constitutional injury. Brief for Appellants at 15. None of these other measures, however,

7. Evidence proffered to the District Court also shows the minimal difference between the 64 plan and the 63 plan for each individual county in which an appellant resides. J.A. Ex. A604. The "dilution" caused by use of the 64 plan ranges from 3/100ths of 1% to 23/100ths of 1%. The District Court, reviewing these same figures, aptly commented that "[s]uch minor improvement hardly reaches the level of significance." 536 F. Supp. at 783; A. 23.

8. The obvious constitutionality of the apportionment plan can be seen by comparing the figures in this case with the plans struck down by this Court in 1964. Besides the scheme at issue in *Reynolds v. Sims,* discussed above, this Court held unconstitutional plans (i) from New York that permitted 37.5% of the state's population to elect a majority of the state assembly and 38.1% to elect a majority of the state senate, *WMCA, Inc. v. Lomenzo,* 377 U.S. 633, 647-48 (1964); (ii) from Maryland that permitted 14.1% of the state population to elect a majority of the state Senate and 35.6% to elect a majority of the House of Delegates, *Maryland Committee v. Tawes,* 377 U.S. 656, 665, 667 (1964), (iii) from Virginia that permitted 41.1% of the state's population to elect a majority of the state Senate and

focuses so exactly on the fundamental interest identified in *Reynolds v. Sims* — the right to be free from vote dilution. Appellants contend that dilution is demonstrated by two figures: (i) the ratio of the number of persons in the most populated district to the number of persons in the least populated district, and (ii) the maximum percentage variation (or the relative range), which adds together the deviation from the ideal of the least represented district, Washakie County, and the most represented district, Niobrara County. Under the 64 plan, the ratio is 3.25, and the maximum percentage variation is 89%.

These figures are irrelevant for two reasons. First, they measure the impact of a reapportionment plan on only two (here two of 23) districts. Unlike the "minimum population" figures, they largely ignore the effect of a reapportionment plan on the state as a whole.[9] Second, none of the appellants are voters in Washakie County. See J.A. 2-3. This case was not certified as a class action, *see* Tr. 357-59, and, therefore, figures showing the effect of redistricting on one county not resided in by any appellant are legally irrelevant to the claim by appellants that they have suffered tangible injury.[10]

40.5% to elect a majority of the state's House of Delegates, *Davis v. Mann*, 377 U.S. 678, 688-89 (1964); (iv) from Delaware that permitted 22% of the state's population to elect a majority of the state senate and 18.5% to elect a majority of the state house of representatives, *Roman v. Sincock*, 377 U.S. 695, 705 (1964); and (v) Colorado that permitted 33.2% of the state's population to elect a majority of the state Senate, *Lucas v. Forty-Fourth Gen. Assem.*, 377 U.S. 713, 728 (1964).

9. This Court has relied upon the maximum percentage variation to construct a prima facie test for reapportionment challenges. Where the combined variation of the largest and smallest districts is less than 10%, then this Court will presume that a reapportionment plan is constitutional. *See Connor v. Finch*, 431 U.S. 407, 418 (1977). That conclusion is appropriate, because where no district varies very much from the ideal, then the "minimum population" figure will necessarily be very good. But, as this case illustrates, the converse is not always true, particularly where only one district of sixty-four is attacked as being unconstitutionally overrepresented.

10. In addition, it should be noted that the maximum percentage variation is actually less than the maximum percentage variation figure (90%) contained in the 1963 House plan, *see* J.A. A318, which was upheld by the District Court and this Court. *See* text at 2 *supra*.

In sum, appellants have failed to show an unconstitutional burdening of their interest in remaining free from vote dilution. As this Court has emphasized, the Constitution is "intended to preserve practical and substantial rights, not to maintain theories." *Davis v. Mills*, 194 U.S. 451, 457 (1904). In order to make out a valid equal protection claim, plaintiffs must show "that the class which is purportedly discriminated against consequently suffers . . . imposition of a substantial burden." *Califano v. Boles*, 443 U.S. 282, 295 (1979). The 64 plan, as the District Court recognized, does not impose a substantial burden on appellants; indeed the plan has only a "trivial" impact. 536 F. Supp. at 783. The appellants, having wholly failed to demonstrate unconstitutional dilution of their interest in electing members of the State House of Representatives, cannot demonstrate the infringement of a fundamental interest.[11]

B. The Reapportionment Plan Furthers Legitimate State Interests and, Therefore, Does Not Violate the Equal Protection Clause

1. The Reapportionment Plan Should Be Upheld So Long As There Is A Rational Relationship Between the Challenged Classification and the Advancement of Legitimate State Interests

A constitutional claim brought under the Equal Protection Clause of the Fourteenth Amendment requires this Court to determine if legislative classifications are in ac-

11. In *Swann v. Adams*, 385 U.S. 440 (1967), this Court reversed a district court's approval of a Florida apportionment plan despite the fact that the "minimum population" statistics showed no significant vote dilution. *Id.*, at 442-43. But the Court's analysis is completely consistent with ours. Even where no fundamental interest is impinged, a divergent apportionment plan should be examined in order to ensure that the classification of voters into electoral districts advance legitimate state goals. *See* part III(B), *infra*. In *Swann*, where the State made "no attempt to justify" its classification, the apportionment plan could not survive judicial scrutiny. Here, of course, and as the District Court held, the 64 plan directly furthers important state interests. *See* Part III(B)(2), *infra*.

cord with the principle that "all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The usual standard for judicial review of legislative classifications requires that such classifications be upheld so long as they are "rationally related to achievement of the statutory purposes." *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 723 (1981) (footnote omitted). This Court has developed a more exacting standard of review for classifications that are based upon "suspect" characteristics, *see McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)[12] or that impinge upon a fundamental interest, *see San Antonio School District v. Rodriquez*, 411 U.S. at 29.

The Court in *Reynolds v. Sims* explained that the existence of a fundamental interest in freedom from vote dilution required a reapportionment plan to be "carefully and meticulously scrutinized." 377 U.S. at 562. Such a careful examination of a fit between legislative goals and means is appropriate where the ability of a majority to govern is threatened, for the ability to cast a meaningful vote is "preservative of other basic and political rights." *Id.; see Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667-68 (1966) (quoting from *Yick Wo v. Hopkins*, 218 U.S. 356, 370). In this case no individual's vote has been unconstitutionally diluted, see Part III(A) *supra*, and, consequently, there is no danger that the 64 plan will permit a small minority of voters to override the majority's wishes. Because no fundamental interest has been impinged, there is no remaining justification for the use of an unusually stringent standard of judicial review.

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12. There is no contention in this case that the appellants are members of a "suspect class." Indeed, the appellants exhibit none of the characteristics of suspectness: "the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio School District v. Rodriquez*, 411 U.S. at 28.

This Court has emphasized that where a plaintiff alleges — but cannot demonstrate — the impingement of a fundamental interest, then the proper level of scrutiny for the remaining equal protection claim is the rational basis test. The decision in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978) is illustrative. In that case a group of voters objected to the fact that their community was included within the police, criminal and commercial jurisdiction of the neighboring city of Tuscaloosa although they were not permitted to vote in that city. First, this Court held that the voting rights of the plaintiffs had not been violated because "a government unit may legitimately restrict the right to participate in its political process to those who reside within its borders." 439 U.S. at 68-69. Second, this Court faced the issue whether the exercise of extraterritorial jurisdiction by a municipality bore a "rational relationship to a legitimate state purpose." *Id.*, at 70.

This Court employed the same analysis in *Harris v. McRae*, which concerned a claim that the Hyde Amendment, which limits the use of federal funds to pay for abortions, was unconstitutional. First, the Court rejected the claim that the cutoff in funds impinged the plaintiff's alleged fundamental "liberty" interest. 448 U.S. at 317-19. Second, and after holding that the plaintiffs did not constitute a "suspect" class, the Court considered whether the Hyde Amendment was "rationally related to a legitimate governmental objective." *Id.*, at 324.

The same analysis is appropriate to this case. Because the plaintiffs can show no infringement of their fundamental interest in remaining free from vote dilution, the legislative classification need only be examined under the rational basis test. As we demonstrate in Part III(B)(2), *infra*, the reapportionment plan easily passes this standard.

2. The Allocation of a State Representative to Niobrara County Advances the State Interest in Relying Upon Counties as the Basic Unit of Local Government

This Court has repeatedly emphasized that apportionment plans may reflect a state's policy of insuring the continued strength of county government. In *Mahan v. Howell*, 410 U.S. at 328, this Court upheld a Virginia apportionment plan that advanced "the rational state policy of respecting the boundaries of political subdivisions." That case concerned a court-ordered reapportionment plan that had effectively eliminated the ability of certain local governments to affect the passage of state legislation for their benefit. *Id.* at 324. This Court reversed the lower court apportionment order and reinstated an earlier legislative plan that respected county boundaries. The Court emphasized that: "We are not prepared to say that the decision of the people of Virginia to grant the General Assembly the power to enact local legislation dealing with the political subdivisions is irrational. And if that be so, the decision . . . to provide representation to subdivisions *qua* subdivisions in order to implement that constitutional power is likewise valid when measured against the Equal Protection Clause of the Fourteenth Amendment." *Id.* at 325-26; *see Reynolds v. Sims*, 377 U.S. at 580-81.[13] Of course, the state interest in preserving county lines is not exhausted by the desire of counties to influence local legislation. This Court has noted the "extensive functional interrelationships" between levels of local government that often require "intergovern-

13. Appellants have contended that the Wyoming Legislature, unlike the Virginia General Assembly, does not have the power to pass local legislation. Although the Wyoming Constitution prohibits some local legislation, *see* Art. 3, § 27, it does not purport to bar all local legislation. Indeed, the limitations on local legislation contained within the Wyoming Constitution resemble similar limitations placed on the Virginia General Assembly. *See* Va. Const., Art. IV, § 14.

mental coordination." *Abate v. Mundt*, 403 U.S. 182, 186 (1971); *see Gaffney v. Cummings*, 412 U.S. 735, 749 (1973).

The State of Wyoming has traditionally allocated House seats pursuant to county lines. Both the 1963 and 1971 House apportionment plans drew districts that neither combined any two counties in one district nor divided any county to create a district. *See Schaefer v. Thomson*, 240 F. Supp. at 250 & n.3; *Thompson v. Thomson*, 344 F. Supp. at 1380. That policy was continued in 1981 — the 64 plan neither divided or combined any counties.[14]

The policy of drawing representative districts along county lines represents more than mere historical preference. The State Legislature expressly found that the "needs of each county are unique." The needs of each county must be adequately represented in the Legislature because counties have been and remain "the primary administrative agencies of the State government." *Brown v. Thomson*, 536 F. Supp. at 784; A. 27.

The importance of county government derives from the division of governmental responsibilities in Wyoming. State government in Wyoming is limited; few public services are provided directly by the State. J.A. 16-19 (testimony of Gerald Fox). Rather, the State relies upon county government to assume a wide range of governmental responsibilities, including the maintenance of roads and bridges, the provision of adequate hospital facilities and the prosecution of state offenses. *See* J.A. 17 (testimony of Gerald Fox); Tr. 311-12 (testimony of Kenneth Freeman); Wyo. Stat. 18-3-301 *et seq.* Counties are also required by the State to shoulder the burden of providing the usual panoply of local

14. The history of the reapportionment of the State Senate similarly demonstrates the tradition of drawing districts along county lines. Although the smaller number of senators has made absolute fidelity to county boundaries impossible, even court-ordered apportionment plans have "attempted to preserve historical county lines . . ." *Thompson v. Thomson*, 344 F. Supp. at 1380. The 1981 plan established a 30-member Senate without the creation of even one district that divided a county.

governmental services, ranging from the administration of zoning regulations, *see* Wyo. Stat. 18-5-101 *et seq.*, to the maintenance of solid waste disposal sites, *see* Wyo. Stat. 18-11-101 *et seq.*, to the provision of children's day care centers, *see* Wyo. Stat. 18-13-101.[15]

Because Wyoming has neither an individual nor corporate income tax, counties must work closely with the State to collect revenue. County officers assess, levy, and collect taxes for the counties, school districts, and the state school foundation account. *See* Wyo. Stat. 18-3-801 *et seq.* The State government collects sales and excise taxes for itself and also collects local-option sales tax for counties like Niobrara. *See* Wyo. Stat. 39-6-412, -512, App. pp. 49a-54a. Both Niobrara County and the State thus collect revenue for the benefit of the other.

Counties are, as a practical matter, heavily dependent upon state funding. Although counties have the power to levy some taxes, the State Constitution limits the amount of taxes they can collect. Wyo. Const. Art. 15 §§ 5 & 17, App. p. 2a. The Legislature has assumed considerable responsibility in determining how to fund county governments and school districts, which are generally co-extensive with county boundaries. *See* J.A. 19 (testimony of Gerald Fox).[16] The Legislature has established formulae for the distribution of some state money, *see, e.g.*, Wyo. Stat. 9-7-801, and has on occasion appropriated other funds for the exclusive use of a single county or school district. J.A.

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15. The partisan political structure of the State is also organized along county lines. Political parties are organized, under the aegis of their respective statewide central committees, into county central committees that provide the basic unit of political organization. *See* Wyo. Stat. 22-44-101, -102, -105, -106.

16. The Legislature's responsibility for the funding of local school districts will grow in the future. In November 1982, the citizens of Wyoming adopted a state constitutional amendment that will decrease the amount of local property tax to be retained within each county and increase the amount of state tax levied for the support of public schools. *See* H.J.R. 3, Laws 1981, App. at 58a. The Legislature will thus gain an expanded role in determining how local school districts shall be funded.

46-47 (testimony of Sharron Kelsey); 53-54 (testimony of Don Collamore).[17]

The determination of how to divide state revenues among counties can be of crucial importance to the economic health of a county government and its citizens. Counties that do not receive sufficient state funds "are going to get poorer because they are less and less able to build the kind of communities and infrastructure that would attract new industry." J.A. 61 (testimony of James G. Thompson). As poorer counties become unable to attract new business, "the life of the community, [the] economic base" will diminish. *Id.* Thus, each citizen's vocational and economic interests can be directly affected by the method the State uses to distribute money to his or her county.

The citizens of Niobrara County are particularly threatened. The Chairman of the Board of County Commissioners of Niobrara County testified, "it is vitally important to have adequate access to my representative." Tr. 314 (testimony of Kenneth Freeman).[18] But if, as the appellants request, the 63 plan were implemented, the citizens of Niobrara County would be outnumbered in their representative district by the citizens of Goshen County. J.A. Intervening

17. A state representative's duties do not entail merely voting to distribute proceeds among counties. The State Farm Loan Board, which is a State administrative agency, also distributes State money to county governments for a variety of uses, including the construction of sewer, recreation and courthouse facilities. Annual applications for their revenue greatly exceed available funds. J.A. 53-54 (testimony of Don Collamore). Although state representatives do not vote directly to allocate these moneys, they provide their counties a service by aiding their applications to the Farm Loan Board and by voting on bills containing criteria and guidelines for Board-administered programs. J.A. 55 (testimony of James G. Thompson).

18. Mr. Freeman further explained that: "To me the vital part is that the constituency that elects me also elects my representative. Consequently, if he is not doing the job, I can let them know. If he is from another county, a board of commissioners in my county has no control over the board of commissioners in another county. So that is why to me it is so important that the constituents that elect me and fellow board members also elect our representative. Then we are responsible to the same people." Tr. 315.

Defendant's Exhibits PP & QQ. The interests of the two counties, however, are starkly different. Whereas Niobrara County taxpayers contribute more taxes to the State than the county receives back in revenues, the taxpayers of Goshen County are net beneficiaries of the State's distribution of tax revenues.[19] It is unlikely, therefore, that the citizens of Goshen County would be sympathetic to requests from the citizens of Niobrara to reallocate the distribution of State funds. In every real sense, therefore, the people of Niobrara County would be without representation in the State Legislature and without an advocate in the State Capital if the 63 plan were used. *Cf. Mahan v. Howell*, 410 U.S. at 324.[20]

The demonstrated importance of counties in Wyoming supports the Legislature's finding that "the interests of each county must be guaranteed a voice . . ." in the House of Representatives. J.A. 68.[21] This legitimate state goal is

19. For example, in Fiscal Year 1981, Niobrara County contributed $654,546 more in sales, cigarette and gasoline taxes to the State then it received in return; by contrast, Goshen County received $2,068,916 more than it contributed. J.A. Ex. G-4. Similarly, projections show that in Fiscal Year 1982 Niobrara County will contribute $583,992 more to the state in oil and gas and severance taxes than it receives, and Goshen County will receive $831,854 more than it sends to the State. The difference between the two counties will be exacerbated over succeeding years. *See* J.A. Ex. G-5 and G-6.

20. In addition to the interest in preserving county lines *per se*, the 64 plan enhances the ability of Niobrara residents to participate effectively in the electoral process. Last Term, this Court held that the ability of 6,300 black voters to participate in local elections was hampered by their residence in a rural Georgia county that is two-thirds the size of the State of Rhode Island. *Rogers v. Herman Lodge*, 102 S.Ct. 3272, 3274, 3280 (1982). Niobrara County is by itself larger than the States of Rhode Island or Delaware. J.A. Intervening Defendant's Exhibit QQ; The World Almanac, 458 (1981). The ability of the 2924 residents of Niobrara County to take part in electoral activities would surely be hampered by their being included with Goshen County to form a district with a combined square mileage almost as large as the State of Connecticut. *See* J.A. Intervening Defendant's Exhibits PP & QQ; The World Almanac, 458 (1981).

21. Appendix A to this brief collects Wyoming Statutes that illustrate the functional interrelationships between the state and county governments and thus provide further support for the Legislature's finding.

directly advanced by use of the 64 plan, which ensures that the voices of Niobrara citizens and the needs of Niobrara County will continue to receive attention in the House. As the District Court found, "the interests of the people of Niobrara County would be virtually unprotected" if the 64 plan were not used. 536 F. Supp. at 784; A. 26.

Recognition of the State's interests demonstrates that the decision to use the 64 plan to protect the citizens of Niobrara County passes scrutiny under the "rational basis" test. As this Court has emphasized, that standard merely requires that a state legislature "*could rationally have decided*" that a challenged means promotes a legitimate goal. *Minnesota v. Clover Leaf Creamery Co.*, 101 S.Ct. 715, 725 (1981) (emphasis in original). The District Court held that the 64 plan directly furthered the State's interest and appellants have proffered no reason to disturb that conclusion. The allocation of a representative to Niobrara County is constitutional.[22]

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22. Enactment of the 64 plan would also satisfy the holding of *Reynolds v. Sims*, 377 U.S. at 562, that apportionment plans that — unlike this plan — threaten majority control of a state legislative body must be "carefully and meticulously scrutinized." This Court has emphasized that courts are not "furnished any specialized calipers that enable them to extract from the general language of the Equal Protection Clause of the Fourteenth Amendment the mathematical formula that establishes what range of percentage deviations is permissible, and what is not." *Mahan v. Howell*, 410 U.S. at 329. Although some of the statistical measures of the 64 plan are less favorable than those in plans disapproved by this Court, those statistics are of little use in this case. *See* text at 20, *supra*. The key measurement — the ability of a majority to control the House — demonstrates that appellants are not significantly disadvantaged by use of the 64 plan in place of the 63 plan, *see* text at 18, *supra*, and that those differences that do exist are well justified by the State interests identified above. Accordingly, the 64 plan will pass constitutional muster under either standard of judicial review.

CONCLUSION

This case presents a narrow question: Whether the State of Wyoming may allocate one of sixty-four members of its House of Representatives to the people of Niobrara County in a manner that does not significantly affect appellants. The provision disputed herein — unlike the apportionment plans considered when *Reynolds v. Sims* was decided — does not threaten the interest of any appellant in maintaining majority control of the State Legislature. Absent an infringement of the fundamental interest in remaining free from vote dilution, this Court should not prevent the Wyoming Legislature from structuring its government in a manner best suited for the people and the particular governmental concerns of the State of Wyoming. Accordingly, the State requests this Court to affirm the judgment of the District Court.

Respectfully submitted this 7th day of January, 1983.

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APPENDIX A

Introduction to Statutory Appendix

Wyoming's Constitution and statutes have created and preserved a system of close working relationships among county governments, school districts and the Legislature. Selected provisions which illustrate these relationships are set out in Appendix A. In summary, these provisions demonstrate:

1. County governments provide basic public services including hospitals, W.S. 18-8-102; airports, W.S. 10-5-201; joint health services, W.S. 35-1-304; libraries, W.S. 18-7-102; and other services not detailed in the Appendix, including enforcement of state laws and land use planning.

2. County revenues are limited by Constitutional tax limitations, Art. 15 §5, and debt limitations, Art. 16, §§3 and 5. Local school taxes are also limited, Art. 16, §5; W.S. 21-13-101.

3. County governments levy taxes for local schools, Art. 15, §17; W.S. 21-13-201, and for the state school foundation program, Art. 15, §15; W.S. 21-13-303.

4. County and school district accounts are subject to state audits to ensure proper use of public funds, W.S. 9-2-410, 9-7-336, 21-13-103. Public works construction is governed by state resident preference laws, W.S. 9-8-301, 9-8-403.

5. The authority of county officials is created and limited by state law, Constitution, Art. 14, §3; W.S. 18-2-101, 18-3-504, 18-5-102.

6. Public land funds received by the state from the federal government are distributed to counties, W.S. 9-7-701, 9-7-801.

7. Federal mineral royalties are allocated to several accounts for the aid of schools, towns and counties, W.S. 9-7-901, 9-7-902. Guidelines and criteria for distribution of funds among the several county school districts are pro-

vided by statute, W.S. 21-13-305, *et seq.*, 21-15-101, *et seq.* These statutes have been repeatedly amended during recent years, Ch. 38, Ch. 159, Laws 1979; Ch. 13, Ch. 55, Ch. 56, Laws 1980; Ch. 44, Ch. 45, Ch. 46, Ch. 123, Ch. 150, Laws 1981; Ch. 38, Laws 1982.

8. State excise tax revenues are distributed to counties and other local governments by formulae established by legislation, W.S. 39-6-108, 39-6-210, 39-6-306, 39-6-411.

9. Counties may levy a sales tax, income from which is collected by the state and returned to county and town governments, W.S. 39-6-412, 39-6-512.

10. Sales tax revenue distribution among towns and counties can be altered to provide revenues to growing local governments, W.S. 39-6-512(d).

11. Wyoming's political parties are organized by county units, W.S. 22-4-101, *et seq.*

12. Wyoming's legislative districts utilize county boundaries, Constitution Art. 3, §3; Ch. 76, Laws 1981.

CONSTITUTION, STATUTES AND SESSION LAWS OF WYOMING

CONSTITUTION

ARTICLE 3.

§ 3. Legislative apportionment.

Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate. The senate and house of representatives first elected in pursuance of this constitution shall consist of sixteen and thirty-three members respectively.

ARTICLE 7.

§ 8. Distribution of school funds.

Provision shall be made by general law for the equitable allocation of such income among all school districts in the state. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three (3) months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatsoever. (As amended by Laws 1978, House Joint Resolution No. 2, p. 429.)

ARTICLE 14.

§ 3. Legislature to designate county offices and fix salaries of county officers.

The legislature shall by law designate county offices and shall, from time to time, fix the salaries of county officers, which shall in all cases be in proportion to the value of the services rendered and the duties performed.

ARTICLE 15.

§ 5. County levies limited.

For county revenue, there shall be levied annually a tax not to exceed twelve mills on the dollar for all purposes including general school tax, exclusive of state revenue, except for the payment of its public debt and the interest thereon.

§ 15. State tax for support of public schools.

For the support of the public schools in the state there may be levied each year a state tax not exceeding six mills on the dollar of the assessed valuation of the property in the state.

§ 17. County levy for support and maintenance of public schools.

There shall be levied each year in each county of the state a tax of twelve mills on the dollar of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide.

ARTICLE 16.

§ 3. Limitation on county debt.

No county in the State of Wyoming shall in any manner create any indebtedness, exceeding two per centum on the

assessed value of taxable property in such county, as shown by the last general assessment, preceding; provided, however, that any county, city, town, village or other subdivision thereof in the State of Wyoming, may bond its public debt existing at the time of the adoption of this constitution, in any sum not exceeding four per centum on the assessed value of the taxable property in such county, city, town, village or other sub-division, as shown by the last general assessment for taxation.

§ 5. Limitation on municipal, county or school district debt.

No city or town shall in any manner create any indebtedness exceeding four per cent (4%) of the assessed value of the taxable property therein, except that an additional indebtedness of four per cent (4%) of the assessed value of the taxable property therein may be created for sewage disposal systems. Indebtedness created for supplying water to cities or towns is excepted from the limitation herein.

No county shall in any manner create any indebtedness exceeding two per cent (2%) of the taxable property therein.

No school district shall in any manner create any indebtedness exceeding ten per cent (10%) on the assessed value of the taxable property therein for the purpose of acquiring land, erection, enlarging and equipping of school buildings.

All limitations herein shall refer to the last preceding general assessment.

WYOMING STATUTES, ANNOTATED
Republished Edition, 1977

TITLE 9. ADMINISTRATION OF THE GOVERNMENT.

§ 9-2-410. Examination of books of state institutions and agencies.

(a) The state examiner shall:

(i) Supervise the books, financial accounts and financial records of all state agencies and institutions, counties, school districts and municipalities within the state;

(ii) Visit each state institution or agency without previous notice to the officers thereof at least once each year;

(iii) Make an examination of the books and accounts of state institutions, state agencies, districts and entities described in W.S. 9-7-320(f) not receiving loans or grants from the state farm loan board and incorporated cities and towns under four thousand (4,000) inhabitants, including a thorough inspection of all detailed items and all receipts and expenditures of each such institution, agency, district, entity and city or town;

(iv) Expose faults or erroneous systems of accounting and when necessary instruct county and municipal officers in the proper mode of keeping accounts.

(b) When an annual audit has been performed and an audit report rendered by an independent certified public accountant on a state institution, state agency, district or entity described in W.S. 9-7-320(f) not receiving loans or grants from the state farm loan board or incorporated city or town under four thousand (4,000) inhabitants, the state examiner may accept such audit and audit report in lieu of a state examiner's annual examination of the books and accounts of such state institution, state agency, district, entity or incorporated city or town under four thousand (4,000) inhabitants.

(c) Examinations performed on agencies required to be audited by the revenue sharing division of the U.S. Treasury shall be performed in accordance with the audit guides and standards of revenue sharing recipients within the standards for audit of governmental units as promulgated by the American Institute of Certified Public Accountants.

§ 9-7-336. State authority.

The state examiner, with advice from municipal or hospital officials and certified public accountants, shall formulate, prescribe and publish a chart of accounts which shall be uniform but not necessarily identical by December 31, 1980 for every county and incorported city and town and a hospital oriented chart of accounts for county memorial and special district hospitals.

§ 9-7-701. Distribution of funds.

(a) All funds received by the state of Wyoming, as its distributive share of the amounts collected by the United States government under the provisions of the act of congress of June 28, 1934 (48 Stat. 1269), known as the Taylor Grazing Act, and any act amendatory thereof, shall be deposited with the state treasurer. Upon receipt the state treasurer shall distribute the money to the several counties of the state in which the public lands are located. The state treasurer shall ascertain from the proper United States officers having the records of receipt from leased or sold public lands the amount of receipts from such sources in this state for each year for which money is received by the state, and a separate account shall be kept of the sum received from sale or lease rentals from public lands, which sum shall be segregated by the state treasurer and paid to the county in which the leased or sold public land is located. If any leased or sold land lies in more than one (1) county of the state, each such county shall receive such proportional amount of the revenue as the area of the leased or sold public land included within the boundary of the county bears to the total area of the leased or sold public land.

§ 9-7-801. Apportionment of moneys.

On the first day of January of each year, or as soon thereafter as there shall be any money in the state treasury paid to the state by act of congress, approved June 30, 1906,

as amended by act of congress, approved May 23, 1908, or any act amendatory thereto or supplemental thereof, whereby twenty-five percent (25%), or any other proportion, of the money received from each forest reserve in the state is paid to the state to be expended for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated, the state treasurer shall apportion the money to the several counties of the state entitled thereto in the manner hereinafter described.

§ 9-7-901. Distribution and use of federal government royalties.

(a) All monies received by the state of Wyoming from the secretary of the treasury of the United States under the provisions of the act of congress of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. §§ 181, 191), as amended, except as provided by subsection (b) of this section, shall be deposited in the trust and agency fund and shall be distributed by the state treasurer as follows:

(i) Repealed by Laws 1979, ch. 160, § 3.

(ii) Two and one-quarter percent (2¼%) to the highway fund to be expended by the state highway commission for permanent construction or maintenance work in the counties to which the royalties are attributable with priority given to roads and highways impacted by mineral development;

(iii) Thirty-seven and one-half percent (37½%) to the public school foundation program account;

(iv) Twenty-six and one-quarter percent (26¼%) to the highway fund;

(v) Six and three-quarters percent (6¾%) shall be deposited in the trust and agency fund for the University of Wyoming. This revenue may be used only when authorized by the legislature for the actual and necessary expenses of constructing, equipping and furnishing of new buildings, the repairing of existing buildings, the purchasing of improved or unimproved

real estate, the payment of principal and interest on securities issued to finance these projects or for the payment of principal and interest on securities issued to refund the securities. Any proposed expenditures from this revenue shall be included in the budget of the university submitted to the governor. Payments from this revenue shall be made by the state treasurer only upon properly itemized and receipted vouchers approved by the trustees of the university and filed with the state auditor as provided by law. Notwithstanding the requirement that proposed expenditures from this revenue be included in the university budget submitted to the governor, the trustees of the university are authorized to approve expenditures from this revenue for the payment of principal and interest on any outstanding securities issued pursuant to this paragraph in accordance with the terms of the securities;

(vi) Seven and one-half percent (7½%) shall be distributed to incorporated cities and towns to be used for planning, construction or maintenance of public facilities or providing public services. Any city or town may expend these revenues or pledge future revenues for payment of revenue bonds issued to provide public facilities. However no city or town shall pledge future revenues to the federal government under 43 U.S.C. § 1747 unless the city or town obtains a written determination from the governor, which he may make in connection with his consultation with the secretary of the interior under 43 U.S.C. § 1747 or otherwise, that the pledge will not affect the distribution of mineral royalties provided in this section. The distribution provided under this paragraph to any city or town shall be reduced by an amount equal to the amount of federal mineral royalties withheld from the state by the federal government to repay any loan to the city or town under 43 U.S.C. § 1747. Pledges of this income for revenue

bonds shall not exceed ten (10) years. Each city and town shall receive:

(vii) Nine and three-quarters percent (9¾%) shall be deposited in the capital construction account together with the revenue provided by paragraph (b)(i) of this section to be expended as provided by W.S. 9-7-904;

(viii) Ten percent (10%) shall be deposited in the capital construction account to be expended as provided by W.S. 9-7-903.

(ix) and (x) Repealed by Laws 1979, ch. 159, § 3.

(b) The state treasurer shall ascertain and withhold all bonus payments received from the federal government attributable to coal, oil shale or geothermal leases of federal land within Wyoming and shall distribute it as follows:

(i) Fifty percent (50%) shall be deposited into the capital construction account for the purposes specified in W.S. 9-7-904;

(ii) Fifty percent (50%) shall be deposited into the legislative government royalty impact assistance account in the earmarked revenue fund. The legislature may appropriate these funds to alleviate impact problems resulting from mineral development.

§ 9-7-902. Government royalties construction revenues; educational purposes.

(a) Revenues received under W.S. 9-7-901(a)(viii) shall be credited to a capital construction account. The revenues shall be used to finance state revenue bonds as provided by this section.

(b) The farm loan board shall borrow money in a principal amount not to exceed one hundred million dollars ($100,000,000.00) by the issuance from time to time of one (1) or more series of revenue bonds. The board may encumber revenues under W.S. 9-7-901(a)(viii). Any bonds issued under this section, together with any interest accruing thereon and any prior redemption premiums due in connection therewith, are payable and collectible solely out of

revenues authorized under subsection (a) of this section. The bond holders may not look to any general or other fund for payment of the bonds except the revenues pledged therefor. The bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute its special obligations and the board shall not pledge the state's full faith and credit for payment of the bonds.

(c) Except as otherwise provided bonds issued under this section shall be in a form, issued in a manner, at, above or below par at a discount not exceeding ten percent (10%) of the principal amount of the bonds, at public or private sale, and at a price which will result in a net interest rate to the state of not more than twelve percent (12%) per annum computed to maturity according to standard tables of bond values, including as a part of the rate the amount of any discount permitted by the board on the sale of the bonds and issued with recitals, terms, covenants, conditions and other provisions not contrary to other applicable statutes, as may be provided by the board in a resolution authorizing their issuance and in an indenture or other appropriate proceedings.

(d) Any bonds issued under this section shall:

(i) Be of denominations of five thousand dollars ($5,000.00) or multiples thereof;

(ii) Be fully negotiable within the meaning of and for all purposes of the Uniform Commercial Code, W.S. 34-21-101 through 34-21-1002;

(iii) Mature at such time or serially at such times in regular numerical order at annual or other designated intervals in amounts designated and fixed by the board, but not exceeding thirty (30) years from their date;

(iv) Bear interest payable annually, semiannually or at other designated intervals, but the first interest payment date may be for interest accruing for any period not exceeding one (1) year;

(v) Be made payable in lawful money of the United States at the office of the state treasurer or any commercial bank or commercial banks;

(vi) Be printed at such place as the board may determine;

(vii) Be additionally secured by a reserve fund created from revenues received under W.S. 9-7-901 (a)(viii) or from the proceeds of the bonds, or both, in such amount as determined by the farm loan board but not to exceed an amount equal to ten percent (10%) of the revenue bonds outstanding.

(e) Before any contract is entered into by the farm loan board to retain the services of a financial advisor or to sell the bonds to an underwriter, whether by competitive or negotiated bid, a full disclosure of the terms of the contract including fees to be paid shall be submitted to the management council through the legislative service office.

(f) Proceeds of state revenue bonds shall be credited to an account within the earmarked revenue fund and may be loaned or granted to school districts and community colleges or expended for state capital construction projects as hereafter provided. In determining which school districts and community colleges receive loans or grants hereunder, and in determining which state projects are funded, the farm loan board shall give priority to projects in subdivisions of the state socially or economically impacted directly or indirectly by the development of minerals leased under chapter 3A, title 30, U.S.C. [30 U.S.C. § 181 et seq.]. Pending distribution the state treasurer shall invest bond proceeds in such manner as will comply with all requirements of the Internal Revenue Service to insure the bonds will remain tax free investments.

(g) Not to exceed forty million dollars ($40,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be granted or advanced to school districts. As used in this subsection "school districts" includes boards of cooperative educational services under

W.S. 21-20-101 through 21-20-109. Of this amount up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of royalties under subsection (k) of this section may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be credited to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of royalties under subsection (k) of this section may be disbursed to school districts as grants by the farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(i) The present school population exceeds the capacity of available school buildings;

(ii) School district population projections indicate that an increase in the school population will continue;

(iii) Repealed by Laws 1980, ch. 56, § 2.

(iv) The bonded indebtedness, or the indebtedness authorized by the electors of the district, shall have reached the ninety-five percent (95%) or more of the constitutional debt limit.

(h) Not to exceed thirty million dollars ($30,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be expended for community college capital construction under the provisions of W.S. 39-6-306 (b)(iv).

(j) Not to exceed thirty million dollars ($30,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be expended for state capital con-

struction projects upon appropriation by the legislature after reviewing priorities submitted by the capitol building commission.

(k) All revenues received under W.S. 9-7-901(a)(viii) prior to the issuance of bonds under subsection (b) of this section and all revenues in excess of those required to be otherwise expended or retained pursuant to the resolution or resolutions authorizing the issuance of bonds under subsection (b) of this section may be used by the board to make grants or advances of entitlements under subsections (g) or (h) of this section in the same manner as the proceeds of the bonds are to be used, four-sevenths (4/7) under subsection (g) of this section and three-sevenths (3/7) under subsection (h) of this section.

(m) The provisions of paragraphs (g)(i) through (iv) of this section do not apply to boards of cooperative educational services. Criteria for determining loan or grant eligibility for boards of cooperative educational services shall be established by the farm loan board.

§ 9-8-301. Definition of "resident."

As used in this act [§§ 9-8-301 to 9-8-304, 9-8-308] the word "resident" means any person who shall have been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract; a partnership or association, each member of which shall have been a bona fide resident of the state for one (1) year or more immediately prior to bidding upon the contract; a corporation which has been organized under the laws of the state of Wyoming and has been in existence therein for one (1) year or more immediately prior to bidding upon the contract and which has its principal office and place of business within the state of Wyoming.

§ 9-8-403. Only Wyoming laborers to be employed on public works projects; exception; list of resident laborers.

Every person who is charged with the duty of construc-

tion, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state of Wyoming or any political subdivision, municipal corporation, or other governmental unit thereof, shall employ only Wyoming laborers on such project or improvement, and every contract let by any such person shall contain a provision requiring that such labor be used, provided that other laborers may be used when Wyoming laborers, as defined in this act [§§ 9-8-401 to 9-8-406], are not available for such employment from within the state, or are not qualified to perform the work involved. It shall be the duty of the state employment office nearest the proposed contract or construction site to maintain a list of laborers, classified by skills, who are residents and are available for employment; further said office, when unable to provide the requested number of laborers from its own list, shall immediately contact other state employment offices and request the names of other available laborers. Every person required hereunder to employ Wyoming laborers shall inform said state employment office of his employment needs. If the said state employment office certifies that such person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers.

TITLE 10. AERONAUTICS.

§ 10-5-201. Authority of county commissioners to levy taxes, issue bonds, etc.; funds to be paid into "airport fund"; expenditure generally.

For the purposes of W.S. 10-5-101 through 10-5-204, the board of county commissioners may levy taxes, issue bonds or incur indebtedness as authorized by law for other county purposes. The board of county commissioners by resolution may also issue revenue bonds, notes, warrants and other revenue securities in the manner provided by W.S.

35-2-424 through 35-2-435, as from time to time amended, for trustees of hospital districts for the purposes of W.S. 10-5-101 through 10-5-204. All taxes collected, together with other monies received from the sale of bonds, cities or towns, rents and revenue, donations, federal grants and aid or other sources for this purpose, shall be placed in an airport fund which shall be expended only by the authority provided by law.

TITLE 18. COUNTIES.

§ 18-2-101. General powers.

(a) Each organized county in the state is a body corporate and politic. The powers of the county shall be exercised by a board of county commissioners which may:

(i) Sue and be sued;

(ii) Purchase property for the use of the county and acquire real property at tax sales, as provided by law;

(iii) Sell or convey property owned by the county, when it is in the best interests of the county;

(iv) Make contracts and perform other acts relating to the property and concerns of the county in the exercise of its corporate or administrative powers;

(v) Exercise other powers as provided by law.

§ 18-3-504. Powers generally.

(a) Each board of county commissioners may:

(i) Make such orders concerning the property of the county as they deem expedient;

(ii) Examine and settle all accounts of receipts and expenses of the county and examine, settle and allow all accounts against the county and issue county orders therefor as provided by law;

(iii) Provide for the construction and maintenance of county buildings and insure them in the name of the county treasurer for the benefit of the county. If there

are no county buildings they may provide suitable rooms for county purposes;

(iv) Apportion and order the levying of taxes as provided by law;

(v) Represent the county, care for the county property and manage the business and concerns of the county in all cases where no provision is made by law;

(vi) Lay out, alter or discontinue any road running through the county and for such purpose acquire the use of lands therein either by gift, prescription, dedication, the exercise of the right of eminent domain, purchase or lease and perform such other duties respecting roads as required by law;

(vii) Grant licenses for keeping ferries, toll bridges and toll gates as prescribed by law;

(viii) Perform such other duties as prescribed by law.

(b) Each board of county commissioners may provide snow removal services on any roads within the county designated as school bus routes by the board of trustees of any school district in the county.

§ 18-5-102. Powers of county commissioners.

Each board of county commissioners may provide for the physical development of the unincorporated territory within the county by zoning all or any part of the unincorporated territory.

§ 18-7-102. Manner of levying and collecting tax; library fund.

The county library tax shall be levied and collected as other county taxes and the money collected shall be set apart as the county library fund. Nothing herein shall be construed to authorize any levy in excess of those authorized by law.

§ 18-8-102. Prerequisites to appointment of board of trustees; indebtedness authorized for construction; annual tax levy for maintenance.

(a) When the board of county commissioners has received

sufficient guaranties that not less than fifteen thousand dollars ($15,000.00) is available for constructing, acquiring or equipping a county hospital, wing or portion of a building suitable for operation of a county hospital so arranged as to be capable of future enlargement, or where a county has acquired a hospital valued at not less than twenty-five thousand dollars ($25,000.00), it shall appoint a nonpartisan board of trustees of the hospital, none of which shall be a medical doctor, a practitioner of the healing art or a county commissioner.

(b) A county indebtedness may be created and county bonds authorized and issued for the construction, acquisition and equipment of the hospital in the manner then provided by law for the creation of indebtedness and the issuance of bonds for the construction of a courthouse and jail. When the hospital has been constructed or acquired and equipped the board of county commissioners shall annually levy a sufficient tax on all the taxable property in the county to provide for the maintenance of the hospital or wing or portion thereof. The tax shall be levied and collected as other county taxes and the amount collected shall be set apart as the county memorial hospital fund. No money shall be expended from the fund without the approval of the board of county commissioners.

TITLE 21. EDUCATION.

§ 21-13-101. Maximum rate of school district tax.

(a) Except as otherwise provided by law, the maximum rate of school district tax that may be levied for all school purposes, exclusive of bond interest and redemption, for any school district in any school year on each dollar of assessed valuation within the school district is as follows:

(i) In a unified school district, twenty-eight (28) mills for combined elementary and high school purposes, three (3) mills of which shall not be levied except with

the approval of a majority of the voters voting on the proposition;

(ii) Any school district involved in or affected by a district reorganization plan which is contested and not finally determined may levy taxes for the support of its public schools in the same manner and amount as authorized by law for a unified school district. The provision of this subsection terminates July 1, 1979.

§ 21-13-102. Cancellation of unpaid warrants; remedy of holders.

The treasurer of each school district shall on the first Monday in April of each year cancel all unpaid warrants of such school district which have been issued for a period exceeding twelve (12) months, and shall at the same time certify to the board of trustees of such school district the number and amount of each warrant which he has canceled. Such list of canceled warrants shall be entered in the minutes of the board and published at least once in a regular issue of a newspaper published in the county, during the month in which such warrants were canceled. Any person or persons holding a school district warrant which has been canceled under the provisions of this section, may present such warrant to the board of trustees of such school district at any subsequent time, not later than five (5) years after the date such warrant was canceled. The said board of trustees shall issue to the holder of such school district warrant, a new warrant covering the amount due on the original warrant at the time so canceled.

§ 21-13-103. Audit of books and accounts of school district.

The board of trustees of each school district may provide for an audit of the books and accounts of the district by a private auditor. The board shall file a report of each audit with the county clerk, the state department of education, and the state examiner.

§ 21-13-201. Levy, collection and distribution of 12 mill school tax.

(a) Pursuant to article XV, section 17 of the constitution of the state of Wyoming, there shall be levied each year, by the county commissioners in each county in the state, a tax of twelve (12) mills on the dollar of assessed valuation of the property within the county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer.

(b) On or before September 1 of each year, the state department of education shall notify the treasurer of each county of the percentage proportion to be allocated from the countywide twelve (12) mill school levy to each school district in his respective county. The computation of the distribution of the countywide twelve (12) mill levy shall be made by the department of education on the basis of the number of classroom units for the previous year, as that number is computed in W.S. 21.1-231 [§ 21-13-308]. This number, for each district, is to be converted into a percentage of the total number of classroom units for all school districts within the county. The county treasurer shall distribute the revenue arising from the countywide twelve (12) mill levy among the school districts of the county according to the percentage computed above, and pursuant to W.S. 21.1-223 [§ 21-13-207].

§ 21-13-206. Disposition of fines, penalties and forfeitures.

All fines, penalties, and forfeitures provided by the school laws may be recovered by an action by any citizen in the name of the people of the state of Wyoming for the use of the proper school district or county, and when they accrue, shall belong to the school district or county in which they have accrued and shall be deposited with the county treasurer.

§ 21-13-207. Apportionment of funds by county treasurer.

On the second Monday of December and the second Monday in June of each year, and on the second Monday of any month when requested by the treasurer of a school district, the county treasurer shall apportion all monies in the county treasury belonging to the county school fund, including fines and forfeitures, among the various school districts of the county in the same percentages as provided by W.S. 21-13-201(b) and shall immediately pay such amount to each school district, taking receipt therefor.

§ 21-13-301. Distribution to counties of money in common school account for use of public schools.

On or before March 31 and September 30 in every year, if there is any money to the credit of the common school account within the permanent land income fund for the use of the public schools in the state treasury, the state superintendent shall distribute the income in the account pro rata among the several counties of the state according to the number of children of school age in each as determined by the average daily membership of the school districts within each county for the preceding school year. The state superintendent shall certify to the state auditor the amount each county is entitled to and the account out of which it is to be paid. The auditor shall then draw warrants on the state treasurer payable to the treasurer of each county for the amount so certified.

§ 21-13-302. Distribution of money to school districts by county treasurer.

The county treasurer shall cause the money distributed to the county under W.S. 21-13-301 to be distributed among the several school districts in the county pro rata according to the number of children of school age in each school district as shown by the average daily membership in each district for the preceding school year. The state superinten-

dent shall make all information necessary to the distribution available to each county treasurer. No distribution shall be made under this section to any school district for a year in which no school has been actually maintained within the boundaries of the school district during the previous year.

§ 21-13-303. Levy of state tax; proceeds to be placed in trust and agency fund; reduction of mill levy.

(a) For the support of the public elementary and secondary schools of the state, there shall be assessed and levied each year a state tax of six (6) mills on the dollar of the assessed valuation of the property within the state, except as provided in subsection (c) of this section, said tax to be in addition to any and all other taxes authorized by law.

(b) The funds that may accrue under this section shall be placed in an account within the trust and agency fund. Balances in the account, if any, shall not lapse or be transferred to any other fund or account.

(c) Between July 1 and July 10 of each year the state auditor and the state treasurer shall determine if the unobligated average daily general fund balance over the preceding fiscal year exceeds twenty percent (20%) of the amount of the general fund appropriations for the present biennium. If the unobligated average daily general fund balance exceeds twenty percent (20%) of the amount appropriated, the excess is appropriated and shall be transferred into the foundation program account as soon as possible. The auditor and treasurer shall immediately notify the state board of equalization of the amount to be transferred. Based on the current assessed valuation of the state, the board shall compute the estimated amount of revenue to be produced by a six (6) mill levy, subtract the amount transferred to the foundation program account, and then compute the mill levy necessary to produce the difference. The board shall then certify the recomputed mill levy to the county assessors to be levied and collected in lieu of the six (6) mill state levy for the next tax year.

§ 21-13-304. State treasurer to keep separate account in trust and agency fund.

The state treasurer shall keep a separate account within the trust and agency fund and except as otherwise provided by law all monies appropriated for school purposes shall be kept in such account.

§ 21-13-305. Definitions.

(a) For the purposes of this article [§§ 21-13-301 to 21-13-313]:

(i) "Average daily membership" means the aggregate number of pupils present plus the aggregate number of pupils absent, divided by the actual number of days the school is in session for the year. Pupils who have withdrawn from school or who have been absent for more than ten (10) consecutive calendar days shall not be counted as members;

(ii) "Classroom unit" means the unit for measuring minimum educational needs for foundation program purposes;

(iii) "District" means any school district as defined by law;

(iv) "Elementary school" means a school with two (2) or more teachers consisting of grades one (1) through eight (8), or any appropriate combination of grades within this range, as determined by the plan of organization for schools authorized by the district board of trustees;

(v) "Secondary school" means a school consisting of grades nine (9) through twelve (12), or any appropriate combination of grades within this range as determined by the plan of organization by the district board. When grades seven (7) and eight (8) are included in an organized junior high school, they shall be considered for the purpose of this act [§§ 21-1-101 to 21-14-106] as though included in a separate elementary school;

(vi) "Kindergarten" means a class of pre-first-grade students authorized by the board and attending classes in half-day sessions;

(vii) "Foundation program" means the minimum level of educational services and facilities, as defined in this article, which is to be made available to each district from the required local effort and the public school foundation program account;

(viii) "Public school foundation account" and "foundation account" mean the account created by section 229 of this article [§ 21-13-306] for use in financing education in public one (1) teacher, elementary and secondary schools;

(ix) "Regulations of the state board" means those regulations which the state board may adopt upon the recommendation and with the advice of the state superintendent. The state superintendent shall recommend for adoption by the state board such rules and regulations as he deems necessary for carrying out the purposes of this article;

(x) "Teacher" means any member of the teaching or professional staff engaged in the service of the public one (1) teacher, elementary, and secondary schools for whom certification is required as a condition of employment;

(xi) "Vocational teacher" means such teacher of vocational subjects as is certified as such by the state department of education and shall be engaged in teaching vocational agriculture, home economics, commercial subjects, industrial arts, trades and industries, or distributive education classes, as defined or approved by the state department of education. Eligibility to participate in other state or federal reimbursement programs shall not be a criterion of definition. This definition shall not include teachers of adult or night classes;

(xii) "Year of college training" shall be the successful

completion of such a one (1) year course of study as shall be approved by the state department of education.

§ 21-13-306. Foundation program account established; disposition of monies.

(a) There is hereby established the public school foundation program account consisting of funds appropriated to, or designated to said account by law, or by gift from whatever source, for distribution to districts in accordance with the provisions of this article.

(b) The resources of the public school foundation account shall be paid into the state treasury, and shall be drawn out and distributed to the districts upon certification of the state superintendent and upon vouchers approved by the state auditor payable to the treasurer of the several districts.

§ 21-13-307. Eligibility to share in distribution of money from account.

(a) Each district which meets the following requirements shall be eligible to share in the distribution of funds from the foundation account:

(i) Employed and compensated teachers for not less than nine (9) school months during the previous year and has actually employed and is compensating at least one (1) teacher for the current year. Provided that a newly organized district need not have employed any teachers during the previous year in order to qualify for its first year of operation;

(ii) Operated all schools for a term of one hundred eighty (180) days or more during the previous school year; provided, that if the school term of any school in a district was less than one hundred eighty (180) days, the amount allotted per classroom unit under section 21.1-232 of the statutes [§ 21-13-309] for such school shall be in proportion to the length of the term the school actually operated, unless caused by closures

of schools due to fuel shortages, fire, construction problems, weather, civil disturbance or threatened civil disturbance, days of national recognition, wide-spread illnesses, or whenever necessary to protect the health, safety or welfare of students, teachers and other employees, provided such closures are approved by the state board of education or are the result of presidential or gubernatorial executive orders;

(iii) Furnishes to the state superintendent such statistical data and information as he shall reasonably require to compute a district's entitlement to share in the foundation account and the extent of such entitlement.

§ 21-13-308. Allotment of classroom units for purpose of determining amount to be included in foundation program for each district.

(a) In determining the amount to be included in the foundation program for each district, the state superintendent shall first allot to each district, classroom units for one (1) teacher, elementary and secondary schools, classroom units for vocational education and classroom units for kindergartens and special rooms.

(b) Elementary schools shall be allotted classroom units based on average daily membership in accordance with the following table:

Number of Average Daily Membership	Divisor	Minimum Units
Less than 25	10	1.00
25 to 44	15	2.40
Number of Average Daily Membership	Divisor	Minimum Units
Less than 25		
45 to 89	18	2.93
90 to 139	20	4.94
140 to 199	23	6.95
200 and over	25	8.65

(c) Secondary schools shall be allotted classroom units based on average daily membership, in accordance with the following table:

Number of Average Daily Membership	Divisor	Minimum Units
Less than 25	10	1.0
25 to 59	12	2.4
60 to 109	15	4.91
110 to 169	18	7.27
170 to 239	21	9.39
240 to 299	23	11.38
300 and over	25	13.00

(d) Allotments of classroom units in accordance with subsections (b) and (c) of this section shall be made on the average daily membership for the preceding school year provided that:

(i) If the average daily membership in any school for the first sixty (60) school days of the current school year is as much as one hundred (100) ADM or ten percent (10%) greater than the average daily membership of such school for the first sixty (60) school days of the preceding school year, upon application of the district board of trustees made to the state board, the total number of classroom units may be recalculated to determine the current entitlement; or

(ii) If by February 1 of the current school year, the enrollment in any school increases by fifteen percent (15%) or more as determined by comparing actual number of pupils in membership to the average daily membership of such school for the first sixty (60) school days of the preceding school year upon application of the district board of trustees made to the state board, the total number of classroom units may be recalculated to determine the current entitlement; or

(iii) If the average daily membership in any school

for the first sixty (60) days of the current school year is more than one hundred (100) ADM or ten percent (10%) less than the average daily membership for the first sixty (60) days of the preceding school year, the state board may recalculate the current entitlement.

(e) In allotting classroom units for vocational education, one (1) classroom unit shall be allotted for each full-time vocational teacher teaching vocational subjects. A proportionate fraction of a classroom unit shall be allotted for each vocational teacher teaching less than full time. The state board shall determine standards for vocational education programs.

(f) In allotting classroom units for one (1) teacher schools, there shall be allotted one (1) full unit for each school.

(g) In allotting classroom units for kindergartens, there shall be allotted one-half classroom unit for each twenty-five (25) kindergarten students, or a proportional fraction thereof, in average daily membership in each school.

(h) In allotting classroom units for exceptional or handicapped children, there shall be allotted one (1) full unit, or proportional fraction thereof, for each ten (10) pupils identified as educable retarded, and for pupils also evaluated or diagnosed as having physical, psychological, or social disabilities which impair learning; and one (1) full unit, or proportional fraction thereof, for each eight (8) pupils identified as trainable retarded; provided a properly certificated teacher qualified to teach pupils having the disabilities included in this article [§§ 21-13-301 to 21-13-313] is employed in each allocated classroom unit, and such pupils are not otherwise included in any other classroom unit determination.

§ 21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allot-

ted to a district by thirty-seven thousand three hundred dollars ($37,300.00) for the fiscal year beginning July 1, 1981.

(b) The amount to be included in the foundation program of a district for transportation shall be seventy-five percent (75%) of the amount actually expended by the district during the previous school year for the operation and maintenance of transportation routes for the transportation of children to and from regular school sessions; plus one-sixth of the amount actually expended by the district during the previous four (4) years as transportation capital outlay for purchase of all school busses used only for the transportation of children to and from regular school sessions.

(c) The amount to be included in the foundation program of a district for tuition shall be the amount expended in the previous school year by the district for tuition of students who attended school in another district or state. However, a district which in the previous year did not operate a high school, or was not included in a special high school district which operated a high school, shall not include tuition expended for high school students, except in such amount as such tuition shall exceed five (5) mills on its valuation in the previous year.

(d) The amount to be included in the foundation program of a district for maintenance of isolated or homebound children shall be seventy-five percent (75%) of the amount expended in the previous school year by the district under section 65 of this code [§ 21-4-401], and under regulations which have been or may be established by the state board.

(e) The amount included in the foundation program of a district for education of children who have a mental, physical or psychological handicap or social maladjustment which impairs learning is the amount spent in the current fiscal year for educational diagnosis and evaluation of all such children, the amount spent in the current fiscal year for tuition and maintenance of such children who attend school in another district or state, and the amount spent

for such education within the district during the current school year, under regulations established by the state board. No reimbursement shall duplicate any other category. (Laws 1978, ch. 42, § 1; 1979, ch. 38, § 1; ch. 61, § 1; 1980, ch. 55, § 1; 1981, ch. 123, § 1.)

(f) The total amount of the foundation program for each district shall be the sum of the amounts included in subsections (a) through (e) above.

§ 21-13-310. Annual computation of local district resources.

(a) A district shall be required to make an annual computation of the sum of local district resources, including the following:

(i) The amount of revenue which will be received by each school district as its share of the countywide twelve (12) mill school levy, shall be based on computations made by the state department of education;

(ii) The required local tax effort in the current year for the assessment and levy of school taxes by the district according to the following schedule:

(A) A district actually and physically operating a school within the boundaries of the district and therein offering instruction in grades kindergarten or one (1) through twelve (12); ten (10) mills on every dollar of property within the district subject to taxation for school purposes;

(B) A nonunified district actually and physically operating a school within the boundaries of the district and therein offering instruction in grades one (1) through eight (8), six and two-thirds (6 2/3) mills on every dollar of property within the district subject to taxation for school purposes.

(iii) Repealed by Laws 1981, ch. 43, § 2.

(iv) The district's share of the common school account within the permanent land income fund which was distributed to it in the previous school year under

the provisions of sections 21.1-224 [§ 21-13-301] and 21.1-225 [§ 21-13-302] of the statutes;

(v) The district's share of fines and forfeitures distributed to it during the previous school year under the provisions of section 222 of this code [§ 21-13-206], and sections 33-7 [§ 33-1-109], 33-8 [§ 33-1-110], 7-439 [§ 7-16-131] and 7-440 [§ 7-16-132], Wyoming Statutes 1957;

(vi) The district's share of forest reserve funds distributed to it during the previous year under the provisions of section 9-576, Wyoming Statutes 1957 [§ 9-7-804];

(vii) The district's share of Taylor Grazing Act funds distributed to it during the previous school year under the provisions of section 9-750 [9-570], Wyoming Statutes 1957 [§ 9-7-702];

(viii) The district's share of the county motor vehicle fund distributed to it during the previous school year by the county treasurer under the provisions of section 31-49, Wyoming Statutes 1957 [§ 31-4-401];

(ix) Seventy-five percent (75%) of the amount of tuition paid to the district during the previous school year including such amounts as it may be required to charge under the provisions of section 67 of this code [§ 21-4-501]; provided, that no district shall include in its annual computation of the sum of local district resources any tuition paid to the district during the previous school year by another district for the education of pupils with any mental or physical handicap because of services available in the receiving district.

(b) On or before July 10th of each year the county treasurer of each county shall certify to the state superintendent, in such form as the state superintendent shall provide, a report of monies distributed by him to each district within the county during the previous school year. (Laws 1955, ch. 119, § 6; 1957, ch. 174, § 6; W.S. 1957, § 21-68; Laws 1959, ch. 184, § 1; 1965, ch. 189, § 1; 1967, ch. 109,

§§ 2 to 4; 1969, ch. 111, § 233; 1971, ch. 265, § 2; 1973, ch. 165, § 1; ch. 245, § 3.)

§ 21-13-311. Determination of amount to be distributed to each district from account; undistributed balance.

(a) The amount of money which shall be distributed to each district from the foundation account shall be determined by subtracting the sum of the local district resources computed in accordance with the terms of section 233 of this code [§ 21-13-310] from the total amount of the foundation program computed in accordance with the terms of section 232 of this code [§ 21-13-309].

(b) When it can be shown by any involved party that any factor used in computing the amount of money distributed to a district has changed ten percent (10%) or more from that value used in making such computation compensatory payment or deductions from payment shall be made as soon as practical, but no later than when the next regular payment is made to the district.

(c) So much of the foundation account which is not distributed in any year, for any reason, shall be held in the foundation account for distribution in subsequent years in accordance with this article [§§ 21-13-301 to 21-13-313], and amendments thereto.

§ 21-13-312. Prorating payments when income from account insufficient.

To preserve the integrity of the foundation account for the biennium, and so that payments can be made during the full school year for each year of the biennium, if and when it appears to the state superintendent that the income available to the foundation account shall not be sufficient to meet the payments as provided herein, the money available in the account shall be prorated among the classroom units at an amount less than one hundred percent (100%) of the amounts earned.

§ 21-13-313. Distribution of funds.

(a) For each school year the state auditor, on the certification of the state superintendent, shall draw warrants on the state treasurer for the amount of money which shall be distributed to each district from the foundation account, as computed under the provisions of section 234 of this article [§ 21-13-311]. Said warrants, payable to the treasurer of the district concerned, shall be delivered to the state superintendent for distribution to the proper officials of the several school districts.

(b) The state superintendent shall determine on or before July 25th of each year the tentative allotment of foundation funds to which each district is entitled under the provisions of this article [§§ 21-13-301 to 21-13-313].

(c) Beginning August 1 of each year, and on or about the first day of each month thereafter for not to exceed a total of seven (7) successive months, the funds available in the foundation account shall be distributed as rapidly as possible until each district has received an amount not to exceed fifty percent (50%) of its tentative allotment. On or before March 1 of each year, the state superintendent shall determine the exact amount of the foundation account to which each district is entitled and the remainder of the amount due each district for the current year shall be distributed in three (3) equal installments on March 15, April 15 and May 15.

§ 21-13-314. Supplemental entitlements to school districts.

(a) In addition to entitlements received under the public school foundation program, unified school districts whose assessed valuation per classroom unit is below the state average shall receive, as supplemental entitlement from the public school foundation program fund an amount determined by subtracting the assessed valuation per classroom unit of the school district from the average assessed valuation per classroom unit of the state and multiplying the dif-

ference in assessed valuation per classroom unit of the school district by fifteen (15) mills times the number of classroom units within the district for the fiscal year beginning July 1, 1978 and seventeen (17) mills for each fiscal year thereafter.

(b) The state superintendent of public instruction shall devise a formula to provide supplemental aid for nonunified school districts, proportional to that received by unified school districts, considering the difference in qualifying levies, and maximum permissible levies without a vote of the people.

(c) To be eligible for supplemental entitlement, a school district during the preceding fiscal year shall have levied not less than one (1) mill below the maximum tax allowed, without a vote of the people, under W.S. 21-13-101. (Laws 1978, ch. 42, § 1; 1981, ch. 46, § 1.)

(d) If there are insufficient funds in the school foundation program fund to meet the supplemental entitlement, supplemental entitlements to school districts shall be reduced proportionately and there shall be no reduction in the entitlement due from the public school foundation program.

§ 21-15-101. School district capital construction entitlements; computation.

(a) Each Wyoming school district may finance a capital construction project in whole or in part as provided by W.S. 21-15-101 through 21-15-104.

(b) Annually on or before September 30 the department of education shall compute an annual construction entitlement for each Wyoming school district as hereafter provided.

(c) To compute the annual entitlement of each Wyoming school district the department shall multiply the total classroom units in each Wyoming school district times four thousand dollars ($4,000.00) and subtract the product of four (4) mills times the current assessed value of the school

district for which the computation is made. The entitlement shall be reduced proportionately if the funds made available by W.S. 21-15-103 are insufficient. The entitlement shall annually be paid to each school district on or before January 1 except as provided by W.S. 21-15-104 (b).

§ 21-15-102. Use of capital construction entitlements.

(a) The annual capital construction entitlement distributed pursuant to W.S. 21-15-101 (c) shall be deposited in a separate account and may only be expended to finance a capital construction project for the school district upon majority vote of the school district trustees. The entitlement may not be encumbered except as provided by W.S. 21-15-104 unless legally encumbered before July 1, 1982. The entitlement may only be:

(i) Accumulated in an interest-bearing account earmarked for future construction needs in building and equipping school facilities;

(ii) Expended to retire an existing bond issue;

(iii) Expended to acquire and develop building sites;

(iv) Expended to repay advances as provided by W.S. 21-15-104;

(v) Expended for a continuing building project including renovation and repair of existing buildings or improvements which would conserve energy;

(vi) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

(vii) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

§ 21-15-103. Funding authority.

Commencing July 1, 1977, and annually thereafter the amount of revenue required for the distributions pursuant to W.S. 21-15-101 (c) is annually appropriated from any funds of the state which may be earmarked by the legislature for such purposes as may be supplemented by legislative appropriations from time to time for the payment of the entitlements to each school district or as provided by W.S. 21-15-104 (b).

§ 21-15-104. Capital construction; advances.

(a) A Wyoming school district receiving annual entitlements under W.S. 21-15-101 may apply for and receive advance entitlements as determined by the department of education under W.S. 21-15-101(c) as hereinafter provided from the permanent Wyoming mineral trust fund, revenues provided by W.S. 9-7-903 or any other funds authorized by the legislature including general fund appropriations. No advance from the permanent Wyoming mineral trust fund shall be in an amount which when added to the current indebtedness of the school district will exceed the debt limit of the school district. An advance from revenues other than the Wyoming permanent mineral trust fund does not constitute an indebtedness of the school district receiving the advance. The farm loan board with the recommendation of the state superintendent of public instruction shall approve the advance entitlements if it appears the project is essential to the district and the district is indebted or will be indebted within three (3) months to at least eighty-five percent (85%) of its debt capacity with outstanding bonds payable from general property tax levies of the school district and including any advances from the Wyoming permanent mineral trust fund. The amount of entitlement granted to any school district shall be determined as follows:

(i) Divide the most recent assessed valuation of the state by the most recent determination of classroom units in the state, subtract the most recent assessed

valuation of the district divided by the most recent determination of classroom units in the district and multiply the difference by ten percent (10%) and also by the most recent determination of classroom units in the district applying for the advance entitlements;

(ii) The district may receive not to exceed the sum so computed as advance entitlements.

(b) Before approving any advance entitlements the project shall have been approved by the qualified electors of the school district in the case of advance entitlements from any revenues other than the permanent mineral trust fund and the indebtedness shall have been approved by the qualified electors of the school district if the advance is from permanent Wyoming mineral trust funds. If the advance entitlements are approved the state treasurer shall disburse the money from the appropriate fund as necessary to pay costs of the project as they accrue. The farm loan board shall adopt rules and regulations to implement this section and to determine priorities based on need for construction loans or grants among eligible school districts based on:

(i) The assessment of the quality and quantity of student space in existing buildings used for instruction in each school district;

(ii) The determination of pupil space needs or the excess of pupil space available for the instructional purposes in each school building;

(iii) The projection and probability of changes in student populations within each school district for an ensuing ten (10) year period.

(c) The farm loan board shall publish the criteria to be used in determining the eligibility for state assistance on school construction projects and the procedures to be followed during the review process.

(d) Except as authorized by the farm loan board, if an advance of monies is made to a school district from any source other than the permanent mineral trust fund, future entitlements of the district pursuant to W.S. 21-15-101(c)

shall be paid into the earmarked revenue fund as provided by W.S. 9-7-903(g), or if advances were made from the permanent mineral trust fund, into the permanent Wyoming mineral trust fund, as the case may be, until the advance is repaid. The farm loan board may authorize a percent less than one hundred percent (100%) of each year's entitlement to be paid into the earmarked revenue fund or permanent mineral trust fund for outstanding and future advance entitlements so long as the percent authorized to be paid is projected to recapture the advance entitlement plus interest, if any, within seven (7) years from the date the advance entitlement was granted. The unpaid balance of each advance from revenues under W.S. 9-7-903 and any source other than the permanent mineral trust fund shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 or any revenues other than the permanent mineral trust fund has no obligation to repay the advance except as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

TITLE 22. ELECTIONS.

§ 22-4-101. Composition, election and qualifications of county central committees.

The county central committee of each political party consists of precinct committeemen and committeewomen elected in the county at the regular biennial primary election. Each political party in each precinct shall elect one committeeman and one committeewoman for each two hundred fifty (250) votes or major fraction thereof cast for the party's candidate for representative in congress in the last general election, but provided that no precinct shall be entitled to less than one (1) precinct committeeman and precinct committeewoman. Precinct committeemen and

committeewomen shall be electors registered in the party and resident in the precinct. If a precinct boundary line is changed for any reason, the county commissioners shall determine the number of precinct committeemen and committeewomen to which the affected precinct is entitled.

§ 22-4-104. County central committee organizational meeting; notice of meetings.

The county central committee shall meet and organize under the direction of the county chairman at the time and place determined by the county chairman within ten (10) days after its members have been certified elected. The county chairman shall also publish a notice of all meetings of the county central committee in a newspaper of general county circulation not less than two (2) days prior to a meeting.

§ 22-4-106. County convention.

The county convention of each political party shall meet during the first fifteen (15) days of March.

§ 22-4-108. Delegates and alternates to state convention; county platform.

The county convention shall elect from electors resident in the county and registered in the party delegates and alternates to the state convention as apportioned by the rules of the party. The county convention may also adopt a county platform.

§ 22-4-117. State convention members.

Members of the state convention are the delegates or their alternates chosen by the county conventions, and the delegates or their alternates chosen at large by the young Republican or young Democratic organizations in accordance with rules of their respective party.

§ 22-4-118. State convention powers and duties.

(a) The state convention has the following powers and duties:

(i) To nominate electors of president and vice-president of the United States;

(ii) To elect national committeemen and committeewomen;

(iii) To adopt a platform;

(iv) To select delegates and alternates to national nominating conventions;

(v) To formulate or change the rules governing the internal organizations of the party which rules must include:

(A) The time, place, manner of election and terms of office of party officers not provided by statute;

(B) The method of apportioning delegates and alternates to the state convention to each county;

(C) The method of selecting delegates and alternates to the national convention;

(D) The name, powers and duties of any standing committee of the state central committee and the state convention;

(E) Rules of conduct for county and state conventions;

(F) Powers and duties delegated to county and state committees.

(vi) To conduct such other business as it deems necessary or proper.

§ 22-5-401. Procedure generally.

(a) The vacancy in nomination which occurs if a candidate, between primary and general elections, dies, is disqualified to hold the office for which nominated, fails to accept the nomination where required by law, or files a withdrawal or rejection of nomination with the officer respon-

sible for printing ballots and voting machine labels, shall be filled by certificate filed with such officer which shall state:

(i) The cause of vacancy and name of the former nominee;

(ii) The name, age, place of residence, post-office address, social security number, and qualifications of the successor nominee; and

(iii) The office and term for which nominated.

(b) The certificate shall be prepared and filed by:

(i) The state central committee of the political party of the former nominee for a partisan office to be voted for by the electors of the entire state or of a district larger than a county, except that the successor nominee for the office of state senator in a multi-county senatorial district shall be selected and certified by the combined county central committees of the former nominee's political party of the counties included in the district;

(ii) The county central committee of the political party of the former nominee for a partisan office to be voted for by the electors of a county or a subdivision thereof;

(iii) The county bar association for the office of justice of the peace.

(c) Vacancies created by failure of write-in nominees to accept nomination must be filled not later than thirty-nine (39) days before the general election.

TITLE 35. PUBLIC HEALTH AND SAFETY.

§ 35-1-304. Treasurer designated; fund to be created; composition and use of fund; preparation and submission of budget; tax levy authorized.

(a) In the case of a county and/or city health department, the county and/or city treasurer, as a part of his official duties as county and/or city treasurer, shall serve as

treasurer of the department, and his official bond as county and/or city treasurer shall extend to and cover his duties as treasurer of the department. In the case of a district health department, the county treasurer of the county in the district having the largest population, as determined by the last federal census, as a part of his official duties as county treasurer, shall serve as treasurer of the district department and his official bond as county treasurer shall extend to and cover his duties as treasurer of the department.

(b) The treasurer of a county and/or city or district health department shall, upon organization of the department, create a county and/or city or district health department fund to which shall be credited:

(i) Any moneys that may be appropriated from the general county fund or funds;

(ii) Any moneys received from state, federal or other grants or donations for local health purposes;

(iii) Any moneys received from mill levies authorized by this act [§§ 35-1-301 to 35-1-309].

(c) Any moneys credited to said fund shall be expended only for maintenance and operation of the department and claims or demands against said fund shall be allowed upon certification by the health officer or a designated member of the board of health.

(d) A county and/or city board of health shall, annually before April 1st of each year, estimate the total cost of maintaining the department for the ensuing fiscal year, and the amount of moneys that may be available from unexpended surpluses or from state or federal grants or other grants or donations. Said estimates shall be submitted in the form of a budget to the board of county commissioners and/or city governing body and said board shall provide any moneys necessary over estimated moneys from surpluses, grants and donations to cover the total cost of maintaining the department for the enusing fiscal year.

(e) A district board of health shall, annually before April

1st of each year, estimate the total cost of maintaining and operating the department for the ensuing fiscal year and the amount of moneys that may be available from unexpended surpluses or from state or federal grants or other grants or donations. Said estimates shall be submitted in the form of a budget to a committee composed of the chairmen of the boards of county commissioners and/or city governing body of all counties and/or cities comprising the district. The cost of maintaining and operating the department, over estimated moneys from surpluses, grants or donations, shall be apportioned by the committee among the counties comprising the district on a basis of population, as determined by the last federal census, of each participating county in proportion to the total population of all counties comprising the district. The boards of county commissioners of the respective counties shall provide any moneys necessary to cover the proportionate share of their county.

(f) A tax levy may be made by the board of county commissioners specifically for the public health purposes of not to exceed one (1) mill made on assessed valuation.

TITLE 39. TAXATION AND REVENUE.

§ 39-2-401. Certification of tax levies.

(a) All governmental entities in Wyoming having the power to levy or require the levy of ad valorem taxes shall annually notify the board of county commissioners of the county in which the entity is located, of the amount of tax to be collected against the taxable property of the district, as follows:

(i) On before the fourth Monday in May by incorporated cities and towns under four thousand (4,000) inhabitants;

(ii) On or before the first Monday in July by the board for levies for livestock inspection as provided by W.S. 11-390 [§ 11-23-308];

(iii) On or before July 31 by all governmental entities subject to the Uniform Municipal Fiscal Procedures Act [§§ 9-7-317 through 9-7-340] and all special purpose districts having the authority under general laws to levy taxes or impose assessments;

(iv) On or before the first Monday in August by the board for state purposes as provided by W.S. 9-559 [§ 9-7-602], 21.1-226 (c) [§ 21-13-303 (c)] and this act.

(b) Tax levies for all governmental entities as certified by the board of county commissioners except as otherwise provided by law following notification pursuant to subsection (a) of this section shall be collected by the county treasurer.

(c) No levy certified by the board of county commissioners shall exceed the statutory or constitutional limitation for the governmental entity for which the levy is made and the county treasurer shall not collect any levy in excess of those limitations.

§ 39-6-108. Distribution of revenue.

(a) Revenue received under this article shall be transferred to the state treasurer who shall distribute it as follows:

(i) All license fees under W.S. 39-6-102 (a) shall be credited to the state general fund;

(ii) Thirty-eight and one-fourth percent (38¼%) of the taxes collected shall be credited to the state general fund;

(iii) Sixty-one and three-fourths percent (61¾%) of the taxes collected shall be distributed to incorporated cities and towns and to boards of county commissioners in the proportion the cigarette taxes derived from sales within each incorporated city or town or county bears to total cigarette license taxes collected. The computation for the distribution shall be made by the board according to the monthly returns filed by the wholesalers.

§ 39-6-210. Distribution of gasoline license taxes.

(a) All gasoline license taxes and fees received by the board under this article shall be transferred to the state treasurer who shall credit them to the proper accounts.

(b) The state treasurer shall deposit all license fees under W.S. 39-6-203 into the state highway fund.

(c) The state treasurer shall make deductions from the taxes collected under this article in the following order:

(i) Deduct not to exceed two percent (2%) of the taxes collected corresponding to the actual cost of the administration of this article for the month and credit the money to the general fund;

(ii) Deduct the pro rata share of the cost of collecting the taxes received from gasoline used for aircraft at any municipal or county airport and distribute the remainder to the city, town or county where the airport is located. These funds shall be used for the maintenance of the airport;

(iii) Deduct the amount necessary to refund to incorporated cities and towns the taxes paid on gasoline used for municipal purposes as provided by W.S. 39-6-212;

(iv) Deduct twenty-five percent (25%) of the remainder after making the deductions specified in paragraphs (i), (ii) and (iii) of this subsection and transfer it to the state highway fund for construction and reconstruction of primary, secondary and forest roads in the state;

(v) Deduct the amount necessary to refund the taxes paid on gasoline used for agricultural purposes as provided by W.S. 39-6-211.

(d) After making the deductions provided by subsection (c) of this section the state treasurer shall distribute the remainder as follows:

(i) Two-thirds shall be distributed as follows:

(A) Twenty-three percent (23%) shall be distributed to county treasurers on July 15 and

quarterly thereafter. Each county treasurer shall credit such revenues to the county road fund for the improvement and maintenance of county roads. The distribution to each county shall be based on:

(I) One-third in the ratio in which the area of the county bears to the total area of the state;

(II) One-third in the ratio in which the rural population including the population within the cities and towns with less than one thousand four hundred (1,400) bears to the total rural population of the state according to the last federal census;

(III) One-third in the ratio in which the assessed valuation of the county bears to the last total assessed valuation of the state.

(B) Two percent (2%) shall be distributed on July 15 and quarterly thereafter to cities and towns having a population of more than one thousand four hundred (1,400) in the ratio which the population of each such city or town bears to the total population of all such cities and towns according to the last federal census;

(C) The amount necessary for the payment of interest upon any state highway bonds;

(D) The remaining revenues shall be credited to the state highway fund for the maintenance, construction and reconstruction of state highways.

(ii) One-sixth shall be distributed as follows:

(A) Seventy-five percent (75%) shall be credited by the state treasurer to the county farm-to-market road account in the highway fund. The highway commission shall allocate to each county a share based on fifty percent (50%) upon the ratio which the rural population of each county bears to the rural population of the state according to the last federal census and fifty percent (50%) based on the

ratio which the area of the county bears to the total area of the state. Any interest earned on invested funds allocated to counties shall be credited to each county's matching fund requirements as provided by W.S. 24-38 [§ 24-2-110];

(B) Twenty-five percent (25%) shall be distributed to incorporated cities and towns to be used in their street and alley program in the ratio which the population of each city or town bears to the total population of all cities and towns according to the last federal census.

(iii) One-sixth shall be distributed monthly to incorporated cities and towns and counties. The distribution to cities and towns shall be based on the taxes paid upon gasoline sold to and distributed by dealers located within each county but outside the incorporated limits of cities and towns. Taxes paid upon gasoline sold and distributed by dealers located outside the state to consumers in the state shall be distributed to the county wherein the consumer is located.

§ 39-6-306. Same; disposition of money received and collected under section 39-6-302 (f).

(a) All revenues received under W.S. 39-6-302 (f) shall be deposited in the capital facilities revenue account within the earmarked revenue fund. Any unexpended balance in the capital facilities revenue account may be invested by the state treasurer and interest earned shall be credited to the capital facilities revenue account.

(b) The monies in the capital facilities revenue account shall be administered by the capitol building commission and disbursed by the commission for the following purposes:

(i) and (ii) Repealed by Laws 1979, ch. 159, § 3.

(iii) Thirty percent (30%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to a school district capital construction account within the earmarked revenue fund to finance

the school districts' capital construction entitlements authorized by W.S. 21-15-101 through 21-15-104, or such proportionate part of each entitlement as the revenues available under this paragraph bears to the total of all such entitlements;

(iv) Ten percent (10%) of the tax revenues deposited in the capital facilities revenue account shall be transferred to an earmarked revenue fund account to finance in whole or in part new or preexisting community college construction. Allocations by the community college commission to the community colleges shall be made as soon as practicable following receipt of deposit information, and shall be made according to a distribution formula as follows:

(A) Fifty percent (50%) of the amount deposited shall be distributed to the community colleges in the same proportion as full time equivalency enrollment for the individual college bears to the total enrollment for all the colleges. Full time equivalency enrollment, as defined by the community college commission, shall be determined at the semester end for the most recently completed semester prior to the deposit;

(B) Twenty-five percent (25%) of the amount deposited shall be distributed to the community colleges in equal amounts;

(C) Twenty-five percent (25%) of the amount deposited shall be distributed to the colleges or a college as may be determined by the community college commission based upon a consideration of need and priorities within the community college system. The colleges shall submit construction proposals and funding requests to the commission to facilitate these discretionary distributions;

(D) While processing the discretionary distribution provided by subparagraph (iv)(C) of this

subsection, the community college commission may specify its intention to allocate future discretionary portions to specific projects or purposes;

(E) Nothing provided under this paragraph shall prevent the use of other funds available under W.S. 39-6-302(f) and this section to finance community college construction.

(v) The balance of the revenues shall be credited to the state highway fund for constructing, repairing and acquiring highways and related facilities.

(c) and (d) Repealed by Laws 1979, ch. 159, § 3.

§ 39-6-411. Distribution of sales tax to general fund, counties, cities and towns; deduction for administrative costs.

(a) License fees, penalties and interest collected by the board pursuant to this article shall be transferred to the state treasurer who shall credit them to the general fund.

(b) Revenue collected by the board under W.S. 39-6-404 shall be transferred to the state treasurer who shall:

(i) Credit two-thirds (⅔) to the state general fund except as provided by subsections (c) and (d) of this section;

(ii) Deduct one percent (1%) from the remaining one-third to cover all administrative expenses and costs attributable to the one-third share and credit the general fund for that amount;

(iii) The balance shall then be paid monthly to the treasurers of the counties, cities and towns for payment into their respective general funds. The percentage of the balance that will be distributed to each county and its cities and towns will be determined by computing the percentage that net sales taxes collected attributable to vendors in each county including its cities and towns bear to total net sales taxes collected of vendors in all counties including their cities and towns. This

percentage of the balance shall be distributed within each county as follows:

(A) To each county in the proportion that the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county including cities and towns;

(B) To each city and town within the county in the proportion the population of the city or town bears to the population of the county.

(c) Whenever any person commences after the effective date of this act to construct an industrial facility, as those terms are defined in W.S. 35-12-102 (a), under a permit issued pursuant to W.S. 35-12-106, the state treasurer shall thereafter pay to the county, and cities and towns of that county in which the industrial facility is located, impact assistance payments from the monies available under W.S. 39-6-411(b)(i). Each payment shall be equal to the excess of each monthly payment made under W.S. 39-6-411(b)(iii) during the period of construction over the base period amount and shall continue during the period of construction. Such impact assistance payments shall be distributed to the county and to the cities and towns therein in the same ratio as that established under W.S. 39-6-411(b)(iii). The impact assistance payment shall be in addition to all other distributions under W.S. 39-6-411, but no impact assistance payment shall be made for any period in which the county or counties are not imposing the full one percent (1%) tax authorized by W.S. 39-6-412 and 39-6-518. For purposes of this subsection, the industrial facility will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of any adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility upon the adjoining county are significant and establish the ratio of impacts between the counties and

certify that ratio to the state treasurer who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio.

(d) As used in subsection (c) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility are ninety percent (90%) complete, provided, if payments are already being made under this act, commencement of construction of another industrial facility will not be considered for purposes of establishing a new base period or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

(ii) "Base period amount" is the average monthly distribution under W.S. 39-6-411(b)(iii) for the twelve (12) month period immediately prior to the commencement of construction, provided that on each anniversary date of commencement of construction the state treasurer shall establish a new base period amount by multiplying the base period amount by a factor of 1.08.

§ 39-6-412. Political subdivisions prohibited from imposing sales taxes except as provided herein; procedures for imposing tax; distribution of receipts.

(a) The state preempts the field of imposing tax upon retail sales of tangible personal property, admissions and services as provided by this article and no county, city, town or other political subdivision may impose, levy or collect taxes upon retail sales, admissions and services except as provided in this section.

(b) Any county of the state may impose an excise tax at a rate in increments of one-half of one percent (.5%) not to exceed a rate of one percent (1%) upon retail sales of tangible personal property, admissions and services made

within the county. The purpose of the tax is for general revenue.

(c) No tax shall be imposed under this section and W.S. 39-6-518 until the proposition to impose the taxes is submitted to the vote of the qualified electors of the county and a majority of those casting their ballots vote in favor of imposing the taxes. Excise taxes imposed under this section and W.S. 39-6-518 shall commence on the first day of the second month following the election approving the imposition of the tax.

(d) The proposition to impose an excise tax shall be at the expense of the county and be submitted to the electors of the county upon the receipt by the board of county commissioners of a petition requesting the election signed by at least ten percent (10%) of the electors of the county. The number of electors required shall be determined by the number of votes cast at the last general election. The election shall be at the direction and under the supervision of the board of county commissioners.

(e) The proposition may be submitted at any general election or at a special election called for that purpose. A notice of election shall be given in at least one (1) newspaper of general circulation published in the county wherein the election is to be held and shall specify the object of the election. The notice shall be published at least once each week for a thirty (30) day period preceding the election. At the election the ballots shall contain the words "for the county sales and use tax" and "against the county sales and use tax". If the proposition is approved the same proposition shall be submitted at each subsequent general election until the proposition is defeated.

(f) If the proposition to impose or continue the tax is defeated the proposition shall not again be submitted to the electors of the county for at least one (1) year. If the proposition is defeated at any general election following initial adoption of the proposition the tax is repealed and shall

not be collected following June 30 of the year immediately following the year in which the proposition is defeated.

(g) If the proposition is approved the board of county commissioners shall by ordinance impose an excise tax upon retail sales of tangible personal property, admissions and services and upon sales and storage, use and consumption of tangible personal property. The ordinance shall include the following:

(i) A provision imposing an excise tax upon every retail sale of tangible personal property, admissions and services made within the county and upon sales made within the county and storage, use and consumption of tangible personal property in the county at the rate approved by the electors;

(ii) Provisions identical to those contained in this article except for W.S. 39-6-401(a) and 39-6-412, insofar as they relate to sales taxes and in article 5 of this chapter, except for W.S. 39-6-501(a), insofar as they relate to use taxes, except the name of the county as the taxing agency shall be substituted for that of the state and an additional license to engage in business shall not be required if the vendor has been issued a state license pursuant to law;

(iii) A provision that any amendments made to this article or article 5 of this chapter not in conflict with this section or W.S. 39-6-518 shall automatically become a part of the sales tax ordinance of the county;

(iv) A provision that the county shall contract with the commission prior to the effective date of the county sales and use tax ordinance whereby the commission will perform all functions incident to the administration of the sales and use tax ordinance of the county;

(h) The administration of the county sales and use tax is vested in the commission which may prescribe forms and rules and regulations for making returns and for the ascertainment, assessment and collection of the taxes. The com-

mission shall keep complete records of all monies received and disbursed by it.

(j) All revenue collected by the commission from the taxes imposed by this section and W.S. 39-6-518 shall be transferred to the state treasurer who shall:

(i) Deduct one percent (1%) to defray the costs of collecting the tax and administrative expenses incident thereto which shall be deposited into the general fund;

(ii) Deposit the remainder into the trust and agency fund for monthly distribution to counties imposing the tax and its cities and towns. The distribution to the county and its cities and towns will be equal to the amount collected in each county less the costs of collection as provided by paragraph (i) of this subsection. The distribution shall be as follows:

(A) To the county for deposit into its general fund in the proportion the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county;

(B) To the incorporated cities and towns within the county for deposit into their treasuries in the proportion the population of each city or town bears to the total population of the county.

§ 39-6-512. Disposition of revenue received.

(a) License fees, penalties and interest collected by the board pursuant to this article shall be transferred to the state treasurer who shall credit them to the general fund.

(b) Revenue collected by the board from the taxes imposed by this article shall be transferred to the state treasurer who shall:

(i) Credit two-thirds (⅔) to the general fund except as provided by subsections (d) and (e) of this section;

(ii) Deduct from the remaining one-third (⅓), one percent (1%) to cover all administrative expenses and costs

attributable to the one-third (⅓) share and credit the general fund for that amount;

(iii) The remainder shall then be paid monthly to the treasurers of the counties, cities and towns for payment into their respective general funds. The percentage of the remainder that will be distributed to each county and its cities and towns will be determined by computing the percentage that net use taxes collected attributable to vendors in each county including its cities and towns bear to total net use taxes collected of vendors in all counties including their cities and towns. The distribution shall be as follows:

(A) To each county in the proportion that the population of the county situated outside the corporate limits of its cities and towns bears to the total population of the county including cites and towns;

(B) To each city and town within the county in the proportion the population of the city or town bears to the population of the county.

(c) In addition to the distribution in subsection (b) of this section, one-third (⅓) of use taxes accruing from out-of-state vendors will be distributed to counties, cities and towns in the same percentage as determined in W.S. 39-6-411(b)(iii).

(d) Whenever any person commences after the effective date of this act to construct an industrial facility, as those terms are defined in W.S. 35-12-102(a), under a permit issued pursuant to W.S. 35-12-106, the state treasurer shall thereafter pay to the county, and cities and towns of that county in which the industrial facility is located, impact assistance payments from the monies available under W.S. 39-6-512(b)(i). Each payment shall be equal to the excess of each monthly payment made under W.S. 39-6-512(b)(iii) during the period of construction over the base period amount and shall continue during the period of construction. Such impact assistance payments shall be distributed to the county and to the cities and towns therein in the same

ratio as that established under W.S. 39-6-512(b)(iii). The impact assistance payment shall be in addition to all other distributions under W.S. 39-6-512, but no impact assistance payment shall be made for any period in which the county or counties are not imposing the full one percent (1%) tax authorized by W.S. 39-6-412 and 39-6-518. For purposes of this subsection, the industrial facility will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of an adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility upon the adjoining county are significant and establish the ratio of impacts between the counties and certify that ratio to the state treasurer who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio.

(e) As used in subsection (d) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility are ninety percent (90%) complete, and provided, if payments are already being made under this act, commencement of construction of another industrial facility will not be considered for purposes of establishing a new base period or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

(ii) "Base period amount" is the average monthly distribution under W.S. 39-6-512(b)(iii) for the twelve (12) month period immediately prior to the commencement of construction, provided that on each anniversary date of commencement of construction the state treasurer shall establish a new base period amount by multiplying the base period amount by a factor of 1.08.

TITLE 42. WELFARE.

§ 42-2-102. Grants to county offices.

The department, from funds in the state treasury appropriated for that purpose, may transfer and deposit to the credit of the county office grants-in-aid in amounts approved by the department for general assistance and emergency assistance.

SESSION LAWS OF WYOMING, 1979

CHAPTER 38

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by twenty-one thousand seven hundred dollars ($21,700.00) for the fiscal year beginning July 1, 1978 and twenty-seven thousand three hundred dollars ($27,300.00) for each fiscal year thereafter.

CHAPTER 159

Section 4. All emergency school loans made pursuant to W.S. 21-13-601 through 21-13-609 shall be immediately repaid into the permanent land fund from the general fund, two million dollars ($2,000,000.00) being hereby appropriated from the general fund for that purpose. Annual entitlements of any school district under W.S. 21-15-101 whose loan is being retired under this section shall be credited to the general fund until the amount of the loan paid off is reimbursed to the general fund. No interest is payable on the general fund advance to repay the permanent land fund loan.

SESSION LAWS OF WYOMING, 1980

CHAPTER 13

Section 1. W.S. 21-15-101(c) is amended to read:

21-15-101. School district capital construction entitlements; computation.

(c) To compute the annual entitlement of each Wyoming school district the department shall multiply the total classroom units in each Wyoming school district times four thousand dollars ($4,000.00) and subtract the product of four (4) mills times the current assessed value of the school district for which the computation is made. The entitlement shall be reduced proportionately if the funds made available by W.S. 21-15-103 are insufficient. The entitlement shall annually be paid to each school district on or before January 1 except as provided by W.S. 21-15-104(b).

CHAPTER 55

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by thirty-two thousand three hundred dollars ($32,300.00) for the fiscal year beginning July 1, 1980.

Section 2. There is appropriated twenty-seven million, six hundred and sixty-six thousand, five hundred dollars ($27,666,500.00) from the general fund of the State of Wyoming for the purpose of funding the public school foundation program.

CHAPTER 56

Section 3. Two million six hundred twenty-five thousand dollars ($2,625,000.00) available under W.S. 9-7-903(k) shall be distributed to Goshen County School District No. 1 as advance entitlements following the provisions and requirements of W.S. 21-15-104 and future entitlements of Goshen County School District No. 1 shall be credited to the account provided by W.S. 9-7-903(g) introductory paragraph until the advance is repaid.

Section 4. There is appropriated from the general fund the sum of one million six hundred thousand dollars ($1,600,000.00), or as much thereof as is necessary, to immediately repay in full any outstanding school district loan balances pursuant to Section 4, Chapter 159, Session Laws 1979. Thereafter, the capital construction entitlements of the affected school districts shall be distributed to the school districts and are no longer encumbered.

Section 5. Two million dollars ($2,000,000.00) is appropriated from the general fund to be expended by the farm loan board for grants under the requirements of W.S. 9-7-903 (g) to school districts.

CHAPTER 69

Section 1.

(a) Fifty thousand dollars ($50,000.00) is appropriated from the general fund to the legislative service office for a study of modifying state and local funding of education as necessitated by the Wyoming Supreme Court in *Washakie County School District Number One et al v. Ed Herschler, et al.* The speaker of the house shall appoint five (5) committee members, not more than three (3) of whom shall be from the same party and the president of the senate shall appoint five (5) committee members, not more than

three (3) of whom shall be from the same party. The management council shall designate one (1) legislator as chairman of the committee.

(b) The committee shall meet and organize no later than April 1, 1980, and shall meet as often thereafter as necessary. The committee shall review funding of education in Wyoming and submit a report including recommendations for legislation to each member of the legislature and the governor on or before October 15, 1980.

(c) The legislative service office shall provide any staff services requested by the committee and authorized by the management council. The committee may request any information and assistance from any state agency or political subdivision. All meetings, records and reports of the committee shall be open to the public. Records and reports of the committee shall be maintained by the legislative service office.

SESSION LAWS OF WYOMING, 1981

ORIGINAL HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION proposing an amendment to Article 15, Sections 15 and 17 of the Constitution of the State of Wyoming to provide for an additional state levy of six mills for education, to decrease the county levy for education from twelve to six mills and to permit the legislature to authorize a special school district property tax levy and to determine allocation of a portion of this levy for the support of education among the several school districts within the state.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF WYOMING, two-thirds of all the members of the two houses, voting separately, concurring therein:

Section 1. The following amendment to Article 15, Sections 15 and 17 of the Wyoming Constitution is proposed for submission to the electors of the State of Wyoming at the next general election for approval or rejection, to become valid as a part of the constitution if ratified by a majority of the electors. The amendment is as follows:

Article 15, Section 15. State tax for support of public schools. For the support of the public schools in the state there may be levied each year a state tax not exceeding twelve mills on the dollar of the assessed valuation of the property in the state.

Article 15, Section 17. County levy for support and maintenance of public schools. There shall be levied each year in each county of the state a tax of not to exceed six mills on the dollar of the assessed valuation of the property in each county for the support and maintenance of the public schools. This tax shall be collected by the county treasurer and disbursed among the school districts within the county as the legislature shall provide. The legislature may authorize boards of trustees of school districts to levy a special tax on the property of the district. The legislature may also provide for the distribution among one or more school districts of not more than three-fourths of any revenue from the special school district property tax in excess of a state average yield, which shall be calculated each year, per average daily membership.

Section 2. The Secretary of State of Wyoming shall endorse the following statement on the proposed amendment:

The adoption of this amendment will permit an increase of the state levy for education by six mills, a decrease of the county levy for education by six mills and permit the legislature to authorize a special school district property tax levy and to allocate a portion of this levy in an equitable manner in response to the Wyoming Supreme Court deci-

sion of January 1980, mandating equalization of school finance.

CHAPTER 16

Section 1. W.S. 9-3-706(a)(ii) and 9-6-164(a) are amended to read:

9-3-706. Powers generally.

(a) The board of charities and reform shall, besides such other powers as may be conferred upon it in accordance with the law, have:

(ii) General supervision and control of all buildings and institutions belonging to or used by the state for charitable, penal or reformatory purposes, including the state hospital at Evanston, Uinta county; the state penitentiary at or near Rawlins, Carbon county; the Wyoming soldiers' and sailors' home located at Buffalo, Johnson county; the Wyoming state training school at Lander, Fremont county; the Wyoming industrial institute located at Worland, Washakie county; the Big Horn hot springs reserve located at Thermopolis, Hot Springs county; the state children's home at Casper, Natrona county; the Saratoga hot springs state reserve at Saratoga, Carbon county; the girls' industrial institute, at Sheridan, Sheridan county; the Wyoming sanitarium at Basin, Big Horn county; and the Wyoming women's center at Lusk, Niobrara county. Deaf and blind persons, juvenile delinquents and orphans and other dependent children, who are not otherwise adequately provided for, are also under the jurisdiction of the board;

9-6-164. The Wyoming women's center; authority to establish and maintain; purpose; supervision.

(a) The Wyoming women's center is established at Lusk, Wyoming, to provide a place of confinement, employment

and training for females convicted of offenses punishable by imprison..ient in the state penitentiary.

CHAPTER 44

Section 1. W.S. 9-7-903(g) introductory paragraph and (k), 11-34-202(a) and by creating a new subsection (d) and 36-3-110(b) are amended to read:

9-7-903. Government royalties construction revenues; educational purposes.

(g) Not to exceed forty million dollars ($40,000,000.00) of the total proceeds of all bonds issued under subsection (b) of this section may be granted or advanced to school districts. Of this amount up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of royalties under subsection (k) of this section may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be credited to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of royalties under subsection (k) of this section may be disbursed to school districts as grants by the farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(k) All revenues received under W.S. 9-7-901(a)(viii) prior to the issuance of bonds under subsection (b) of this section and all revenues in excess of those required to be otherwise expended or retained pursuant to the resolution or

resolutions authorizing the issuance of bonds under subsection (b) of this section may be used by the board to make grants or advances of entitlements under subsections (g) or (h) of this section in the same manner as the proceeds of the bonds are to be used, four-sevenths (4/7) under subsection (g) of this section and three-sevenths (3/7) under subsection (h) of this section.

11-34-202. Revenue to be credited to earmarked revenue fund; use thereof; disposition of excess.

(a) Except as otherwise provided by law, the Wyoming farm loan board shall transmit any revenue received to the state treasurer to be credited to an account within the earmarked revenue fund for the purposes specified in W.S 9-7-903(g).

(d) Following a general fund appropriation by the legislature for administrative expenses, amounts expended pursuant to the appropriation shall be transferred monthly from the account provided by subsection (a) of this section to the general fund as provided by W.S. 9-7-505(b) for the highway fund and trust and agency fund in certain instances. Revenue currently in the account formerly provided for by W.S. 11-34-202(a), (b) and (c), as those subsections existed prior to the creation of this subsection, may be expended for purposes formerly authorized until July 1, 1982 at which time the revenue within the account shall be credited to the account provided by subsection (a) of this section.

36-3-110. Fees.

(b) All money collected for fees shall be paid to the treasurer of the state monthly and shall be credited to the account provided by W.S. 11-34-202(a) for the purpose provided by W.S. 9-7-903(g).

Section 2. W.S. 11-34-202(b) and (c) is repealed.

CHAPTER 45

Section 1. W.S. 21-15-101(a), 21-15-102 and 21-15-104 are amended to read:

21-15-101. School district capital construction entitlements; computation.

(a) Each Wyoming school district may finance a capital construction project in whole or in part as provided by W.S. 21-15-101 through 21-15-104.

21-15-102. Use of capital construction entitlements.

(a) The annual capital construction entitlement distributed pursuant to W.S. 21-15-101(c) shall be deposited in a separate account and may only be expended to finance a capital construction project for the school district upon majority vote of the school district trustees. The entitlement may not be encumbered except as provided by W.S. 21-15-104 unless legally encumbered before July 1, 1982. The entitlement may only be:

(i) Accumulated in an interest-bearing account earmarked for future construction needs in building and and equipping school facilities;

(ii) Expended to retire an existing bond issue;

(iii) Expended to acquire and develop building sites;

(iv) Expended to repay advances as provided by W.S. 21-15-104;

(v) Expended for a continuing building project including renovation and repair of existing buildings or improvements which would conserve energy;

(vi) Expended as lease payments or rent for the use of facilities by the school district. This authority terminates on July 1, 1983 as to leases entered into after June 30, 1983. This section remains effective for leases entered into before July 1, 1983.

21-15-104. Capital construction; advances.

(a) A Wyoming school district receiving annual entitlements under W.S. 21-15-101 may apply for and receive advance entitlements as determined by the department of education under W.S. 21-15-101(c) as hereinafter provided from the permanent Wyoming mineral trust fund, revenues provided by W.S. 9-7-903 or any other funds authorized by the legislature including general fund appropriations. No advance from the permanent Wyoming mineral trust fund shall be in an amount which when added to the current indebtedness of the school district will exceed the debt limit of the school district. An advance from revenues other than the Wyoming permanent mineral trust fund does not constitute an indebtedness of the school district receiving the advance. The farm loan board with the recommendation of the state superintendent of public instruction shall approve the advance entitlements if it appears the project is essential to the district and the district is indebted or will be indebted within three (3) months to at least eighty-five percent (85%) of its debt capacity with outstanding bonds payable from general property tax levies of the school district and including any advances from the Wyoming permanent mineral trust fund. The amount of entitlement granted to any school district shall be determined as follows:

(i) Divide the most recent assessed valuation of the state by the most recent determination of classroom units in the state, subtract the most recent assessed valuation of the district divided by the most recent determination of classroom units in the district and multiply the difference by ten percent (10%) and also by the most recent determination of classroom units in the district applying for the advance entitlements;

(ii) The district may receive not to exceed the sum so computed as advance entitlements.

(b) Before approving any advance entitlements the project shall have been approved by the qualified electors of

the school district in the case of advance entitlements from any revenues other than the permanent mineral trust fund and the indebtedness shall have been approved by the qualified electors of the school district if the advance is from permanent Wyoming mineral trust funds. If the advance entitlements are approved the state treasurer shall disburse the money from the appropriate fund as necessary to pay costs of the project as they accrue. The farm loan board shall adopt rules and regulations to implement this section and to determine priorities based on need for construction loans or grants among eligible school districts based on:

(i) The assessment of the quality and quantity of student space in existing buildings used for instruction in each school district;

(ii) The determination of pupil space needs or the excess of pupil space available for instructional purposes in each school building;

(iii) The projection and probability of changes in student populations within each school district for an ensuing ten (10) year period.

(c) The farm loan board shall publish the criteria to be used in determining the eligibility for state assistance on school construction projects and the procedures to be followed during the review process.

(d) If an advance of monies is made to a school district from any source other than the permanent mineral trust fund, future entitlements of the district pursuant to W.S. 21-15-101(c) shall be paid into the earmarked revenue fund provided by W.S. 9-7-903(g), or if advances were made from the permanent mineral trust fund, into the permanent Wyoming mineral trust fund, until the advance is repaid. The unpaid balance of each advance from revenues under W.S. 9-7-903 and any source other than the permanent mineral trust fund shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 or any revenues other than the permanent mineral trust fund has no obligation to repay the advance except

as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

CHAPTER 46

Section 1. W.S. 21-13-314(c) is amended to read:

21-13-314. Supplemental entitlements to school districts.

(c) To be eligible for supplemental entitlement, a school district during the preceding fiscal year shall have levied not less than one (1) mill below the maximum tax allowed, without a vote of the people, under W.S. 21-13-101.

CHAPTER 76

Section 1. W.S. 28-2-108 through 28-2-111 are created to read:

28-2-108. Counties as election districts.

(a) Each organized county constitutes a separate election district for the election of representatives. Each organized county constitutes a separate election district for the election of senators except that:

(i) Campbell and Johnson counties combined constitute one (1) senatorial district;

(ii) Crook and Weston counties combined constitute one (1) senatorial district;

(iii) Hot Springs and Washakie counties combined constitute one (1) senatorial district;

(iv) Teton and Sublette counties combined constitute one (1) senatorial district;

(v) Goshen and Niobrara counties combined constitute one (1) senatorial district.

28-2-109. Ratios and apportionment.

(a) The ratios for the apportionment of senators and representatives are fixed as follows:

(i) The ratio for the apportionment of senators is the smallest number of people per senator which when divided into the population in each senate district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a senate with thirty (30) senators;

(ii) The ratio for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives;

(iii) If the number of representatives for any county is rounded to zero (0) under the formula in paragraph (a)(ii) of this section, that county shall be given one (1) representative which is in addition to the sixty-three (63) representatives provided by paragraph (a)(ii) of this section;

(iv) If the provisions of paragraph (a)(iii) of this section are found to be unconstitutional or have an unconstitutional result, then Niobrara County shall be joined to Goshen County in a single representative district and the house of representatives shall be apportioned as provided by paragraph (a)(ii) of this section.

(b) Representation in the state senate is hereby apportioned and divided among the several senatorial districts as follows:

(i) Albany County shall have two (2) senators;

(ii) Big Horn County shall have one (1) senator;

(iii) Campbell and Johnson counties combined shall have two (2) senators;

(iv) Carbon County shall have one (1) senator;

(v) Converse County shall have one (1) senator;

(vi) Crook and Weston counties combined shall have one (1) senator;

(vii) Fremont County shall have two (2) senators;

(viii) Goshen and Niobrara counties combined shall have one (1) senator;

(ix) Hot Springs and Washakie counties combined shall have one (1) senator;

(x) Laramie County shall have four (4) senators;

(xi) Lincoln County shall have one (1) senator;

(xii) Natrona County shall have four (4) senators;

(xiii) Park County shall have one (1) senator;

(xiv) Platte County shall have one (1) senator;

(xv) Sheridan County shall have two (2) senators;

(xvi) Sublette and Teton counties combined shall have one (1) senator;

(xvii) Sweetwater County shall have three (3) senators; and

(xviii) Uinta County shall have one (1) senator.

(c) Representation in the state house of representatives is hereby apportioned and divided among the several representative districts as follows:

(i) Albany County shall have four (4) representatives;

(ii) Big Horn County shall have two (2) representatives;

(iii) Campbell County shall have three (3) representatives;

(iv) Carbon County shall have three (3) representatives;

(v) Converse County shall have two (2) representatives;

(vi) Crook County shall have one (1) representative;

(vii) Fremont County shall have five (5) representatives;

(viii) Goshen County shall have two (2) representatives;

(ix) Hot Springs County shall have one (1) representative;

(x) Johnson County shall have one (1) representative;

(xi) Laramie County shall have nine (9) representatives;

(xii) Lincoln County shall have two (2) representatives;

(xiii) Natrona County shall have nine (9) representatives;

(xiv) Niobrara County shall have one (1) representative;

(xv) Park County shall have three (3) representatives;

(xvi) Platte County shall have two (2) representatives;

(xvii) Sheridan County shall have three (3) representatives;

(xviii) Sublette County shall have one (1) representative;

(xix) Sweetwater County shall have five (5) representatives;

(xx) Teton County shall have one (1) representative;

(xxi) Uinta County shall have two (2) representatives;

(xxii) Washakie County shall have one (1) representative; and

(xxiii) Weston County shall have one (1) representative.

28-2-110. Effective date of changes in senate districts. Any changes in senate districts and in the number of senators in those districts are effective for the 1982 elections and the forty-seventh (47th) Wyoming legislature, except that the change of the Goshen-Platte senate district and the Converse-Niobrara senate district to the Converse district, the Platte district and the Goshen-Niobrara district is effective for the 1984 elections and the forty-eighth (48th)

Wyoming legislature. The fact that a senator under the new apportionment shall represent only a portion of the district which elected him is not cause to abridge the term of office of that senator.

28-2-111. Balance of classes of senators. If a senate district represented by more than one (1) senator in the forty-sixth (46th) Wyoming legislature will be represented by fewer senators in the forty-seventh (47th) Wyoming legislature under the provisions of this apportionment, the reductions shall be effected by reducing the number of senators to be elected in the 1982 general election. The senator from the new Lincoln county senate district created by this reapportionment shall be elected to a four (4) year term at the 1982 general election. If the class of senators to be elected in 1982 under this apportionment has more than one (1) member fewer than the class to be elected in 1984, then one (1) of the Laramie county senators elected in 1984 shall be elected only for a two (2) year term. After the 1984 general election the secretary of state shall determine which senator was elected to a two (2) year term by a random process in which each senator elected in Laramie county in 1984 has an equal chance of being selected.

Section 2. W.S. 28-2-101 through 28-2-107 are repealed, except for the purpose of representation in the forty-sixth Wyoming legislature, the senate and house districts and apportionment set forth in W.S. 28-2-101 through 28-2-107 shall continue in effect for the remainder of the term of the forty-sixth Wyoming legislature and as provided in W.S. 28-2-110.

Section 3. It is hereby declared the policy of this state is to preserve the integrity of county boundaries as election districts for the house of representatives. The legislature has considered the present population, needs, and other characteristics of each county. The legislature finds that

the needs of each county are unique and the interests of each county must be guaranteed a voice in the legislature. The legislature therefore, will utilize the provisions of article 3, section 3 of the Wyoming constitution as the determining standard in the reapportionment of the Wyoming house of representatives which guarantees each county at least one (1) representative. The legislature finds that the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the legislature than if each is guaranteed at least one (1) representative. The legislature finds that the dilution of the power of counties which join together in making these declarations is trivial when weighed against the need to maintain the integrity of county boundaries. The legislature also finds that it is not practical or necessary to increase the size of the legislature beyond the provisions of this act in order to meet its obligations to apportion in accordance with constitutional requirements consistent with this declaration.

Section 4. Except as otherwise provided in this act, this act is effective July 1, 1981.

CHAPTER 123

Section 1. W.S. 21-13-309(a) is amended to read:

21-13-309. Determination of amount to be included in foundation program for each district.

(a) The amount to be included in the foundation program of a district for general operation expense shall be determined by multiplying the number of classroom units allotted to a district by thirty-seven thousand three hundred dollars ($37,300.00) for the fiscal year beginning July 1, 1981.

Section 2. There is appropriated five million dollars ($5,000,000.00) from the general fund for the purpose of this act.

CHAPTER 150

Section 1. W.S. 21-15-104(b) is amended to read:

21-15-104. Capital construction; advances.

(b) Except as authorized by the farm loan board, if an advance of monies is made to a school district, future entitlements of the district pursuant to W.S. 21-15-101(c) shall be paid into the earmarked revenue fund as provided by W.S. 9-7-903(g) or into the permanent Wyoming mineral trust fund, as the case may be, until the advance is repaid. The farm loan board may authorize a percent less than one hundred percent (100%) of each year's entitlement to be paid into the earmarked revenue fund or permanent mineral trust fund for outstanding and future advance entitlements so long as the percent authorized to be paid is projected to recapture the advance entitlement plus interest, if any, within seven (7) years from the date the advance entitlement was granted. The unpaid balance of each advance from revenues under W.S. 9-7-903 shall not bear interest and a school district receiving an advanced entitlement from revenues under W.S. 9-7-903 has no obligation to repay the advance except as provided by this subsection. The unpaid balance of each advance from the permanent Wyoming mineral trust fund shall bear interest at six percent (6%) per annum.

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CHAPTER 38

Section 1. W.S. 9-7-901(a)(viii) and by creating a new

paragraph (xi) and 9-7-903(a), (b), (d)(vii), (g) introductory paragraph and (h) are amended to read:

9-7-901. Distribution and use of federal government royalties.

(a) All monies received by the state of Wyoming from the secretary of the treasury of the United States under the provisions of the act of congress of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. §§ 181, 191), as amended, except as provided by subsection (b) of this section, shall be deposited in the trust and agency fund and shall be distributed by the state treasurer as follows:

(viii) Five and seven-tenths percent (5.7%) shall be deposited in a capital construction account to be expended as provided by W.S. 9-7-903;

(xi) Four and three-tenths percent (4.3%) shall be deposited in a capital construction account to be expended as provided by W.S. 9-7-903.

9-7-903. Government royalties construction revenues; educational purposes.

(a) Revenues received under W.S. 9-7-901(a)(viii) and (xi) shall be credited to the capital construction accounts. The revenues shall be used to finance state revenue bonds as provided by this section.

(b) The farm loan board may borrow money in a principal amount not to exceed seventy million dollars ($70,000,000.00) by the issuance from time to time of one (1) or more series of revenue bonds. The board may encumber revenues under W.S. 9-7-901(a)(viii) for bonds in total amounts not to exceed forty million dollars ($40,000,000.00) issued for capital construction projects under subsection (g) of this section and revenues under W.S. 9-7-901(a)(xi) for bonds in total amounts not to exceed thirty million dollars ($30,000,000.00) issued for capital construction projects under subsection (h) of this section. Any bonds issued under this section, together with any interest accru-

ing thereon and any prior redemption premiums due in connection therewith, are payable and collectible solely out of revenues authorized under subsection (a) of this section. The bond holders may not look to any general or other fund for payment of the bonds except the revenues pledged therefor. The bonds shall not constitute an indebtedness or a debt within the meaning of any constitutional or statutory provision or limitation. The bonds shall not be considered or held to be general obligations of the state but shall constitute its special obligations and the board shall not pledge the state's full faith and credit for payment of the bonds.

(d) Any bonds issued under this section shall:

(vii) Be additionally secured by a reserve fund created from revenues received under W.S. 9-7-901 (a)(viii) in the case of school districts or (xi) in the case of community colleges or from the proceeds of the bonds, or both, in such amount as determined by the farm loan board but not to exceed an amount equal to ten percent (10%) of the revenue bonds outstanding.

(g) Not to exceed forty million dollars ($40,000,000.00) of bonds issued under subsection (b) of this section and revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be granted or advanced to school districts. As used in this subsection "school districts" includes boards of cooperative educational services under W.S. 21-20-101 through 21-20-109. Of these amounts up to twenty-five million dollars ($25,000,000.00) of bond proceeds or sixty percent (60%) of revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be advanced to school districts under W.S. 21-15-104. Repayments of advanced entitlements shall be created to a capital reserve account within the earmarked revenue fund which may only be expended upon legislative appropriation. Up to fifteen million dollars ($15,000,000.00) of bond proceeds or forty percent (40%) of revenues under W.S. 9-7-901(a)(viii) not pledged to the repayment of a bond issue may be disbursed to school districts as grants by the

farm loan board following the recommendations of the state superintendent of public instruction. Grants shall only be made to school districts which the superintendent of public instruction finds have a critical need for school facilities, cannot raise sufficient funds and which are using or will use construction entitlements to finance the project unless the construction entitlements are legally committed to another project. The criteria for determining the eligibility of a school district for receiving a grant are:

(h) Not to exceed thirty million dollars ($30,000,000.00) of bond issued under subsection (b) of this section and revenues under W.S. 9-7-901(a)(xi) not pledged to the repayment of a bond issue may be expended for community college capital construction under the provisions of W.S. 39-6-306(b)(iv).

Section 2. W.S. 9-7-903(j) and (k) is repealed.